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Cops in Court:
Assessing the Criminal Prosecutions of Police in Six Major Scandals in the New York City Police Department from 1894 to 1994

By

Kevin E. McCarthy

A dissertation submitted to the Graduate Faculty in Criminal Justice in partial fulfillment for the degree of Doctor of Philosophy.

The City University of New York

2016

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This manuscript has been read and accepted for the
Graduate Faculty in Criminal Justice in satisfaction of the
dissertation requirement for the degree of Doctor of Philosophy.

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Abstract

Cops in Court: Assessing the Criminal Prosecutions of Police in Six Major Scandals in the New York City Police Department from 1894 to 1994

by

Kevin E. McCarthy

Advisor: Dr. Candace McCoy

From the 1890s to the 1990s, the police department in New York City experienced six major corruption scandals that occurred at approximately twenty-year intervals. These cyclical scandals all involved intense public attention, examination by an outside agency, and a comprehensive report calling for departmental reforms to address corruption issues. The scandals resulted in turnover of police commissioners and political fallout for sitting mayors. Police officers faced transfers, administrative sanctions, dismissals, and forced retirements. Some faced criminal prosecution.

This dissertation examines prosecutions of police in the context of the city's changing social and political circumstances surrounding the scandals, while recognizing the influence of key individuals who served as district attorneys or in other prosecutorial positions. Prosecutors charged over four hundred police officers in cases related to the scandals. Research disclosed that the number of prosecutions and the outcomes of the cases varied greatly across the six scandals. The conduct charged in the prosecutions reflected an evolution in the civilian illegal conduct that supported most of the police corruption—from a mix of liquor, gambling, and prostitution to the more recent dominance of illegal drugs.

Research confirmed that each era needed a triggering event to elevate public concerns about ongoing police corruption to the levels of responses that characterized the cyclical scandals. Those responses better explained the phenomenon of the cycles than the severity of the underlying police corruption. Over time, outcomes of the related criminal prosecutions became

more favorable to the prosecutors; that is, a higher percentage of cases resulted in convictions. The number of cops prosecuted increased with the involvement of more prosecutorial agencies, particularly as federal prosecutors picked up their pursuit of police cases and when New York State experimented with a special corruption prosecutor in the 1970s.

The cyclical scandals reflected limits on the effectiveness of criminal prosecution as a response to police corruption, although the prosecutorial response became more essential in the last two scandal cycles. The examination suggests a waning role for federal prosecutors, the need for consideration of a new model to revive the position of special prosecutor, and perhaps an end to the cyclical scandals.

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Introduction

From the 1890s to the 1990s, the New York City Police Department (NYPD) suffered through six major corruption scandals that seemed to appear in twenty-year cycles. Although circumstances that can be categorized as police scandals certainly arose at other times, scholars and other observers recognize the extraordinary phenomenon of the twenty-year cyclical scandals.[1] All of the scandals involved lengthy, highly publicized inquiries by appointed commissions or other entities from outside the NYPD. Seen broadly, the cyclical scandals all attacked police corruption with three types of remedies. First, the scandals produced public exposure of corruption by hearings, reports, and media attention. Second, the NYPD took steps internally to retire, transfer, discipline, or dismiss errant officers and, perhaps to enact administrative reforms to reduce future corruption. Third, some allegedly corrupt officers were criminally prosecuted. Examinations of the scandals have largely overlooked this third remedy, with some attention devoted only to the most notorious prosecutions.

This dissertation examines information obtained through research on the scandal-related criminal prosecutions of approximately four hundred police officers. Analysis and comparison assist in answering questions about the nature of the cyclical scandals and the use of criminal prosecutions in responding to and deterring police corruption. This introduction provides an outline of the chapters to follow after brief factual overviews of the six scandals on which six of the chapters focus.

Overview of the Scandals

In 1894, the New York State Legislature appointed a committee chaired by suburban Republican Charles Lexow to investigate police corruption in New York City.[2] The action was inspired by public allegations made by a crusading minister and the scandal occurred in a city swirling with concerns about crime, immorality, and immigration. The Lexow Committee exposed police abuses in the enforcement of gambling, prostitution, and liquor laws. Many officers were paid off to allow the operation of gambling dens and prostitution locations ("disorderly houses," in the parlance of the time) and to ignore Sunday closure laws and other liquor restrictions. The committee's report in January 1895 (signed only by its Republican members) found "an extraordinary disinclination on the part of the police, so efficient in other respects, to display any desire or activity in the suppression of certain descriptions of vice and crime."[3] Several dozen police officers were prosecuted criminally, mostly for bribery-related charges, and Theodore Roosevelt returned to city politics as a reforming police commissioner.

In 1912, the New York City Board of Aldermen (forerunner of the city council) appointed a special committee chaired by Henry Curran to investigate the police department. Once again, the three vices of gambling, prostitution, and liquor were the major corrupting influences on police conduct. The Curran Committee presented recommendations for administrative reforms for the department. In particular, the committee's report minced no words in criticizing the police commissioner: "We have become convinced that the present Police Commissioner, Rhinelander Waldo, is incompetent and unfit to perform the duties of his office."[4] As in the previous scandal, criminal prosecutions used bribery as the most commonly charged crime, along with the closely related offense of extortion. A few officers were also charged with perjury, which would become an increasingly important and controversial prosecutorial weapon in subsequent scandals. Manhattan District Attorney Charles A. Whitman

would soon be elected governor, setting a standard for ambitious prosecutors who took on corruption cases.[5]

In the early 1930s, retired jurist Samuel Seabury received a series of appointments to investigate New York City corruption. The process exposed the interrelationship between Prohibition, judicial abuses, organized crime, municipal corruption, and the presidential ambitions of Franklin Roosevelt. Seabury's investigation into the sale of judgeships came across extensive corruption in the NYPD's Vice Squad, which was taking payoffs for the favorable disposition of prostitution cases. The police investigation did not expand widely beyond the Vice Squad, likely because the police were never Seabury's focus and because implications involving Mayor Jimmy Walker and other prominent targets cropped up. Over one dozen police were prosecuted by the Manhattan district attorney while he himself was under investigation. Perjury became the most frequently charged crime in this scandal, which meant some cases might be more easily proven by demonstrating the falsity of court or grand jury testimony rather than having to fully prove underlying corrupt activity. Also, this scandal marked the beginning of federal prosecutorial involvement with the U.S. Attorney's Office prosecuting two of the cases (a tax violation and a Prohibition violation) in federal court.

In the early 1950s, after a Brooklyn newspaper published allegations of police protection of gambling rackets, an investigation by the district attorney resulted in numerous prosecutions and dozens of officers were dismissed from the force in what became known as the Harry Gross scandal.[6] The spotlight shifted away from Manhattan for the first time, and gambling returned to prominence as the corrupting vice. Instead of an appointed investigative body like those previously headed by Clarence Lexow, Henry Curran, and Samuel Seabury, the new scandal was investigated by a special grand jury led by the Brooklyn district attorney (Kings County) that

focused on police payoffs from gambling boss Gross. With the district attorney's office investigating and bringing its own cases, prosecutors did not have to deal with referrals of cases from an appointed committee nor with witnesses who had already testified at public hearings before criminal trials began. Further, in a strategic decision that prosecutors sometimes see as advantageous, the Brooklyn D.A. packed a mega-indictment with twenty-one police defendants built around conspiracy charges. Having greater control over the case did not appear to help the prosecutors, however, and the mega-trial fell apart with eighteen defendants having charges dismissed.

The cycle of the 1970s and mayoral appointment of the Knapp Commission in May 1970 brought the zenith of NYPD corruption scandals. Besides bestselling books, major motion pictures, and political career launches, the scandal saw police prosecutions from all five of the city's district attorneys, both U.S. Attorney's Offices that cover the city, and a new state Office of the Special Prosecutor created during the scandal. The result of this prosecutorial competition (some might call it an unprofessional free-for-all) was an unprecedented number of criminal cases against police. Prostitution and liquor law violations, the mainstays for police payoffs in early cyclical scandals, took subordinate roles in the Knapp era. Gamblers kept up their payments to police "on the pad" shortly before the state lottery and other forms of legalized gambling diminished that vice as a source of corruption, while narcotics-related bribery and extortion rose in prominence. In the criminal prosecutions, this scandal saw the first significant numbers of police officers cooperating and giving testimony against their colleagues.

Appointed by the mayor in July 1992, the Mollen Commission found the NYPD's corruption to be far different than in the Knapp era. Previously, police might have been accepting bribes and closing their eyes to illegal activities, but Mollen-era offenses focused on "police

acting as criminals" themselves.[7] The driving force of corruption was now drugs, and allegations of violent conduct by police became more common. Pockets of corruption were found across the city, with the worst situation in Harlem's 30th Precinct. In that precinct alone thirty-four officers were criminally charged.

Outline of Chapters

Chapter 1 reviews the literature specifically relating to the six cyclical scandals and, more generally, relating to corruption prosecutions of police officers. Numerous publications have recited the facts of the cyclical scandals and some works have told extraordinary stories focused on particular persons involved in the scandals. With a few exceptions that usually involve the most sensational trials, however, the literature has overlooked the criminal prosecutions of police related to the scandals.

Chapter 2 sets forth the methodology and research questions for this dissertation. Information gathered largely through press reports and court records describes the criminal prosecutions of hundreds of police officers in court cases related to the six cyclical scandals. As would be expected, the amount of information available about particular prosecutions differs: entire books describe the most notorious prosecutions while others achieve only brief mention in a newspaper or court docket entry. The three research questions, along with subquestions, focus on the examination of those hundreds of cases to allow comparisons among the prosecutions across the six scandals. Great variation emerges in the volume of prosecutions, nature of the underlying criminal conduct, participation of particular prosecutorial agencies, and outcomes of the cases.

Chapters 3 through 8 focus on the six cyclical scandals in chronological order. The chapters place each scandal in a social and political context for the city, identify the triggering event that appeared necessary to set off each scandal, and describe the prevalent police corruption and the official responses. Review of the prosecutions will focus on outcomes, the manner of case disposition, agencies involved, and common issues encountered. For illustrative purposes, a number of the individual prosecutions will be explored in more detail.

Chapter 9 sets forth conclusions from analysis of the prosecutions and suggests historical lessons for the role of the criminal prosecutions in responding to and deterring police corruption.

NOTES

[1] See, e.g., Lotte E. Feinberg, "Integrity and Corruption Control in the NYPD: 1970–2000," in *Crime and Justice in New York City*, ed. Andrew Karmen (Stamford, CT: Thompson Learning, 2000), 20; Marvin Gottlieb, "Like Clockwork, a Police Scandal," *New York Times*, June 21, 1992; Lawrence W. Sherman, "Introduction: Toward a Sociological Theory of Police Corruption," in *Police Corruption: A Sociological Perspective*, ed. Lawrence W. Sherman (Garden City, NY: Anchor, 1974), 33.

[2] New York City was then the geographic area of New York County, which consisted of the island of Manhattan, plus some parts of the Bronx. The political consolidation of Greater New York occurred in 1898, joining the five counties/boroughs that still comprise the City of New York.

[3] Lexow Committee, Report and Proceedings of the Senate Committee Appointed to Investigate the Police Department of the City of New York (Albany: State Printer, 1895), 21.

[4] Curran Committee, *Report of the Special Committee of the Board of Alderman of the City of New York* (New York: City of New York, 1913), 3. Rhinelander Waldo may now be most favorably remembered as the final role of James Cagney's film career.

[5] For a critical view of how Whitman used his prosecutorial office, see Allen Steinberg, "The 'Lawman' in New York: William Travers Jerome and the Origins of the Modern District Attorney in Turn-of-the-Century New York," *University of Toledo Law Review* 34 (2003): 778.

[6] While the other five cyclical scandals are generally known by the names of the individuals who led investigative hearings, references to the 1950s scandal commonly use Harry Gross's name. An exception is Gabriel Chin, who refers to the "Helfand Investigation."

[7] Mollen Commission, Report of the Commission to Investigate Allegations of Police Corruption and the Anti-corruption Procedures of the Police Department (New York: City of New York, 1994), 2.

Chapter 1

Review of the Literature

Where literature can be most closely related to particular cyclical scandals, this review is presented in the chronological order of the cycles. Then works in other areas are considered. Individual scandals may be identified by the names most commonly used in the literature, which is usually the name of the investigating entity, as well by a range of years covering the scandal or the year of the issuance of a report.[1]

Lexow Committee

While the 1890s scandal was still hot, Rev. Charles Parkhurst wrote his own account in which he described some of the prosecutions in detail.[2] He was deeply interested in the outcome of police prosecutions, having done more than anyone to bring them about, and he spreads blame for prosecutive failures around the police department, the district attorney, and even the grand juries. His book is a lively, contemporaneous account of the scandal, but the reader must bear in mind the author's bias. The book is helpful to check facts from other sources regarding some of the prosecutions. Another contemporaneous account came from Charles Gardner,[3] a private detective who worked for the Society for the Prevention of Crime and who guided Rev. Parkhurst's tour of New York's underworld. While some of the debauchery seems quaint in century-old hindsight, such as the seminude game of leapfrog in one establishment, the pervasiveness of openly operated prostitution is surprising by standards of modern New York. Unfortunately, Gardner devotes no attention to prosecutions other than when he was personally

charged with extortion during the scandal. The formal report issued by the Lexow Committee in 1895 describes much of the illegal police conduct, often specifically naming the offending officers, but without the level of detail provided in some press accounts or by Parkhurst.

Zacks[4] describes Parkhurst's crusade and the vice-related battles of the 1890s in a saucy portrait of the city of that era. He sets forth the progress of the Lexow Committee in detail, with focusing on the moves of police commissioner Theodore Roosevelt. Captain William Devery's trial on bribery charges is touched on, but not other prosecutions of cops.

Sloat[5] provides the most in-depth examination of Parkhurst and the fallout of his crusade. In remarkable detail, Sloat places Parkhurst and the Lexow Committee crusade in the context of an evolving city, the rise of yellow journalism, and radical movements at the turn of the century. The prosecutions of police, however, receive little attention. Sloat describes the trial of Captain Devery thoroughly and explains the effect of the jury's verdict of not guilty on the police and Tammany Hall. Attempting to connect aspects of the scandal to the lives of New York Jews in the 1890s, Sloat also mentions the bribery trial of a detective, Jeremiah Levy. For Sloat to produce such a comprehensive work about Parkhurst's crusade without even a summary of the related police prosecutions suggests the extent to which those prosecutions have been overlooked.

Astor[6] devotes five short chapters to the 1890s scandal and describes aspects of the unlawful police conduct revealed in the Lexow Committee hearings. Some of the descriptions are more explicit than the newspaper accounts, especially for conduct related to prostitution. This additional information may be helpful in evaluating and comparing the underlying conduct of the allegations in prosecutions of police.

Of works with a wider focus than the 1890s police scandal, Lloyd Morris[7] allots less than a chapter to Parkhurst's crusade, none of which brings up the prosecutions of police. Gilfoyle[8] focuses on the antiprostitution angle of Parkhurst's crusades, paying little attention to the police corruption that was essential to the world of commercial sex. Walker[9] uses the Lexow investigation to demonstrate the extent of urban police corruption in the late 1800s, and he describes Theodore Roosevelt's frustrations in the context of shortcomings of the police commission system of management. Burroughs and Wallace[10] emphasize the role of Parkhurst and the Lexow Committee in New York's halting steps toward political reform, and they cast the police in the same mold as corrupt politicians. The latter two books are fine academic works that place the 1890s scandal in the important contexts of New York's evolving society, politics, and morality. The prosecutions of police in that era do not factor into the analyses. Even Berman,[11] writing about New York policing in the 1890s, chooses to ignore the scandal-related prosecutions.

In writing of the next cyclical scandal, Logan looks back to the Lexow Committee and the high level of public concern over police corruption in the 1890s. He emphasizes the class-based points of view on vice and corruption, and employs the derisive terms of the time for the religious men ("Holies") and good government advocates ("Goo-Goos") in referring to the forces behind the Lexow Committee.[12] Logan also draws the connection between cycles in pointing out how some players from the 1890s scandal returned wearing different hats in the next cyclical scandal.

Political scientist V. O. Key[13] ventured into criminal matters to compare the nature of police corruption in the 1890s scandal with corruption of the 1930s. Key's work did not address differences in prosecutorial roles in the scandals, but his observations about the nature of the

civilian bribe payers might have identified another factor to explore for influence in the outcome of prosecutions. Key described 1890s bribe payers as independent operators of illegal businesses, while 1930s bribe payers were members of criminal organizations.

Curran Committee

The scandal that produced the appointment of the Curran Committee in 1912 received considerable scholarly attention in later decades because of the extraordinary case of NYPD Lieutenant Charles Becker, who was charged with the murder of gambler Herman Rosenthal outside the Metropole Hotel in midtown Manhattan.[14] Becker was convicted and executed for the crime, and remains the only police officer in the United States to receive capital punishment. Whether scholarly or sensational, Becker-related research has benefited from the intense coverage devoted to the case by newspapers, particularly the *New York Sun*, and lengthy judicial opinions about the case.[15] Dash[16] produced what is likely the definitive book about the Becker case. To set the context, Dash briefly reviews the 1890s scandal and describes the high levels of corruption in the NYPD as Becker rose through the ranks. Dash's focus, though, is Becker's arrest and prosecution, so he devotes little attention to the scandal investigated by the Curran Committee and other police officers who were prosecuted for lesser offenses than Becker.

Beating Dash in what might have been a race to publish a new book about Becker, Cohen[17] weaves a description of the Becker case with the age of modernity in New York and the rise of a better-organized form of organized crime. The suggested connections to Becker are tenuous, but the book captures the sense of change in America and New York in the pre-World War I years quite well. However, Cohen only makes passing mention of the police corruption investigation triggered by the Becker case.[18]

Preceding the work of Dash and Cohen, Logan[19] wrote the first serious book about the Becker case. As indicated by the title, *Against the Evidence: The Becker-Rosenthal Affair*, Logan suggests injustice in Becker's conviction and execution. Logan's main interest in the work of the Curran Committee comes in asserting that the committee's public hearings served the district attorney's purposes in prejudicing potential jurors for the Becker trial. Like Dash and Cohen, Logan does not discuss police who were criminally prosecuted other than Becker.

Although writing a less scholarly work about the Becker case than the three just outlined, Root[20] thoroughly describes Becker's prosecution and two trials. Prosecutions of other police are not described.

To mention in passing, Delmar[21] writes an unusual mix of personal and family recollections set in the context of the Becker case. It is not of help to research on police corruption. Astor[22] devotes a chapter to the Becker case and describes some of the revelations of the Curran Committee, without discussion of police prosecuted other than Becker.

Seabury Investigation

Like the 1890s scandal, the 1930s scandal inspired some writers while the scandal was on-going or, at least, a fresh memory. In 1932, Walter Chambers wrote a biography of Samuel Seabury that described Seabury's role as prosecutor in Becker's second trial, his ensuing judicial career, and his appointments to positions that guided the investigations of the early 1930s.[23] Chambers outlines the vice squad corruption that dominated the policing side of Seabury's investigations, the use of unsavory cooperators, and some of the resulting prosecutions of police. The book is an excellent resource for information about the prosecutions, although it is incomplete because it was published while many prosecutions were still active.

In another book published in 1932, Northrop and Northrop[24] mainly focus on how Seabury's investigations developed, likely because one of the authors was an assistant counsel under Seabury. They provide some details of the decision-making process at stages of the investigations of vice squad police, but they do not delve into the criminal prosecutions that followed for some of the officers.

Lewis Valentine became police commissioner in the wake of revelations from the Seabury investigations. Limpus[25] and, in an autobiography, Valentine[26] describe Valentine's long career with the NYPD and corruption problems in the department. Prosecutions of police receive only passing mention. Also of little help is the memoir of NYPD Captain Cornelius Willemse,[27] although he does expound on the particular problems of the vice squad in the era of the Seabury investigations.

Mitgang[28] provides a serious biography of Seabury that, unsurprisingly, emphasizes the investigation of corrupt politicians rather than the investigation of corrupt police officers. He later wrote a more thorough work on the era that does describe the police corruption investigation, but only in the context of Mayor Walker's fall and the threat to the ascendancy of Governor Roosevelt.[29] Prosecutions of police are not examined. Similarly, Davis[30] describes the political challenges that the exposure of NYPD corruption posed to Franklin Roosevelt's career, but overlooks the prosecutions.

Seabury had his hands full in juggling various corruption investigations. The timing of prosecutions of police and the release of Seabury's reports allowed the final report of Seabury's Magistrates' Court investigation to briefly summarize many of the prosecutions.[31] The report lacks details of the cases, but is helpful to crosscheck data about the prosecutions from other sources.

Harry Gross Case

The cyclical scandal of the early 1950s produced the most extensively covered police trial in New York since the Becker case. Arm[32] painstakingly describes the investigation of numerous police officers who took payoffs from bookie Harry Gross, but the book's narrative ends with the officers under indictment. Only in the introduction, written by the Kings County district attorney, does the book progress to the next step of summarizing the dramatic collapse of the prosecution's case at trial. More thorough and thoughtful treatment comes from Mockridge and Prall,[33] who take the story through the multi-defendant trial and then through the subsequent departmental trials. Of all of the prosecutions of police related to the six cyclical scandals, this book offers the most complete account of a case that faltered at trial.

The exposure of police taking payoffs from a gambler inspired other investigations into illegal gambling in New York City, most notably resulting in a scandal about point shaving in college basketball games. The highly publicized revelations shocked college sports programs across the nation, yielded some books that examined the allegations (e.g., Rosen[34]), and likely drew attention away from the police scandal related to Harry Gross.

Knapp Commission

Of the official reports produced in all of the cyclical scandals, the Knapp Commission report[35] of the 1970s scandal devotes the most attention to the criminal prosecution of police officers. The report reproduces a bare-bones summary chart of the disposition (conviction/dismissal/acquittal/sentence imposed) of criminal cases against police in New York City in the previous four and a half years. After noting complaints about the leniency of some

sentences imposed on convicted officers, the report concludes that for corrupt officers monetary gains outweigh potential risks of punishment from the criminal justice system (p.253). The report presents only a partial picture because many cases were brought or resolved after its publication.

Most importantly, the Knapp Commission recommended the establishment of a special state prosecutor to handle corruption cases in New York City. Feinberg[36] (2001) describes the decision-making process for that recommendation and notes the competing theories of police corruption: the "rotten apple" theory emphasizing the corruption of individual officers, and the "rotten barrel" theory suggesting that the department spawns large numbers of officers who are either corrupt or tolerant of the corruption of others. The strongest promotion of the importance of prosecuting corrupt police comes, not surprisingly, from the person appointed to be the first special prosecutor after the Knapp Commission. Nadjari[37] strongly attacks the county district attorneys in New York City for supposed ineffectuality in corruption matters, and touts the advantages of an independent outside prosecutor. The present research explores the successes and failures of that prosecutorial office in criminal cases brought against police related to the 1970s scandal.

The 1970s scandal also inspired the two most famous books of all of the cyclical scandals. The biographical treatment of Frank Serpico by Maas,[38] along with its adaptation in the 1973 movie *Serpico*, cast the public's image of NYPD corruption and official inaction. The book briefly describes some of Serpico's trial testimony, which occurred in cases indicted in the Bronx before the empanelment of the Knapp Commission. Because Serpico was not going to be used as a witness in subsequent cases, he did not have extensive dealings with prosecutors other than the Bronx district attorney. The Knapp Commission held hearings that included Serpico's dramatic

testimony in October 1971, and Maas's narrative ends in the spring of 1972, so post-Knapp prosecutions are not part of the story.

Another motion picture, *Prince of the City* (1981), similarly popularized the other famous book based on the 1970s scandal. Daley[39] describes the tortured route of Robert Leuci as a corrupt NYPD detective turned into a problematic cooperator for prosecutors. In particular, the reader sees Leuci's cultivation as a cooperator, the gathering of compelling evidence, and the competition among prosecutors' offices to make cases. Research shows a higher conviction rate in prosecutions of police in the 1970s scandal than in the earlier scandals, at least in part because of more cooperating cops, so Daley's close examination of Leuci's role provides insight. Although Daley gives an extraordinary view of prosecutorial rivalries and decision making and describes some of Leuci's trial testimony in detail, he makes only passing reference to the large number of police prosecutions in which Leuci was not called as a witness.

A third NYPD member did not receive best-seller treatment, although he played a role comparable to those of Serpico and Leuci in the 1970s scandal. Lardner[40] portrays David Durk as a whistleblower who guided Serpico to the *New York Times* after their frustrations with prompting the NYPD, prosecutors, and other agencies to take action against corruption. Durk's trial testimony was even more limited than Serpico's, and Lardner does not extensively describe prosecutions brought against police.

Shecter[41] tells the story of Detective William Phillips, a corrupt cop and Knapp Commission witness, and includes some descriptions of a handful of prosecutions, including a homicide prosecution of Phillips himself.

Armstrong[42] provides the most thorough look at the work of the Knapp Commission from the view of its chief counsel. The book is particularly helpful in understanding the political and

investigative hurdles encountered by the Knapp Commission and the forces involved in creating the Office of the Special State Prosecutor. Since the Knapp Commission had no prosecutorial authority, Armstrong pays little attention to the prosecutions.

Mollen Commission

The official report of the 1990s scandal by the Mollen Commission[43] posits that NYPD corruption had changed from pervasive, lower-level misconduct (the "pad") to more serious misconduct by a much smaller number of officers. In fact, much of the misconduct that the report describes had already been the subject of criminal prosecutions. Feinberg[44] points out that the Mollen Commission rejected the resurrection of the office of the special prosecutor, which had been a prominent recommendation of the Knapp Commission. McAlary[45] focuses on the most notorious case of the NYPD's Michael Dowd, whose arrest provoked the appointment of the Mollen Commission. The book's tales of investigative omissions and conflict between prosecutors and the Mollen Commission provide a disturbing picture of the Dowd case.

Levitt[46] draws on his long experience as a columnist on police matters. He describes some circumstances of the Knapp era, but his greater emphasis is on the Mollen era. His description of the 30th Precinct investigation of the Mollen era is particularly insightful. Much of his work is driven by the personalities of the characters involved, such as the rivalry between Milton Mollen and Robert Morgenthau. He does not delve extensively into the cases brought to court.

In the wake of the Mollen Commission hearings, several public interest foundations sponsored a conference at New York Law School to discuss police corruption matters. Sandler[47] edited a volume of materials assembled at the conference, including some of the major

documents produced from the cyclical scandals ranging back to the 1890s and an overview of the Mollen Commission from one of the commissioners and the chief counsel. Prosecutions are largely ignored.

New York Policing and the Cyclical Scandals

The twenty-year cycle for major NYPD scandals is a widely recognized phenomenon, but one that defies simple explanation. Grennan does not attempt an explanation, merely observing that a scandal every twenty years "seems inevitable."[48] Kappeler, Sluder, and Alpert see the NYPD as having a "preexisting climate for corruption," but do not suggest why the scandals erupt with such regularity.[49] Lardner and Reppetto observe that the three elements of "people, events, and public opinion" converge in the cyclical scandals, and they wryly conclude that the scandals invariably result in "hearings featuring rogue cops, ambitious lawyers, and white-haired eminences."[50]

For the NYPD's cyclical scandals and for other cities as well, Sherman discerns a pattern of "scandal, reform, relapse, and new scandal." Applying his analysis to New York of the 1970s, he suggests that various parties may have a "tolerance quotient" that, if exceeded, contributes to fueling a scandal.[51] A bribe payer might find his tolerance quotient exceeded when corrupt police demand too much money, or an honest officer might reach limits of tolerating the corruption of other officers. For the general public, tolerance limits for police corruption might be exceeded faster if there is a wider discontent over deteriorating conditions in the city. Sherman, though, does not try to explain why these tolerance quotients seem to be reached every twenty years.

Bracey observes that the cyclical scandals mix sincere reform efforts and "political opportunism" without producing lasting changes. She sees the cyclical scandals as akin to

ritualistic floggings, after which the city "goes back to business as usual."[52] The period of twenty years, according to Feinberg,[53] may be the measure of the attention span that the city devotes to seriously dealing with police corruption. Attention wanes as the next generation does not recall lessons from the previous scandal.

Bracey[54] briefly reviews all of the cyclical scandals, with particular attention to the 1890s. She emphasizes the localized nature of New York City policing along with persistent political influences in the late nineteenth Century to explain early NYPD corruption. Grennan[55] also reviews all of the cyclical scandals, adding some personal commentary based on his own experiences with the NYPD. With the exception of mentioning a few notorious cases and the activities of the post-Knapp special prosecutor, he does not consider the prosecutions of police.

Writing about vice enforcement, Williams[56] devotes a chapter to the NYPD, with a review of the Lexow and Seabury commissions and a focus on the Knapp Commission. He describes underlying reasons for vice-related police corruption, but does not delve into actual prosecutions of police.

Lardner and Reppetto[57] provide a thorough history of the NYPD with short descriptions of the scandals. The excellent NYPD history by Astor[58] ends before the last two scandals, but contains detailed accounts of the earlier scandals. More commonly, recent works relating to the NYPD have tended toward the self-congratulatory in providing explanations of the 1990s drop in crime[59] and showing little interest in the corruption scandals.

Punch[60] devotes some attention to the NYPD and the Knapp Commission, but largely focuses on police misconduct in London and Amsterdam for an in-depth review of police deviance with several descriptive classifications for the types of police misconduct. Although he does not consider the prosecutor's role, Punch does emphasize the reluctance of police to

investigate themselves. Chevigny[61] takes a harsher view in his chapter on the NYPD, but similarly points out police shortcomings in controlling abuses from within.

Prosecutors and Police

Davis (2007), Goldstein (1983), McDonald (1979), Worrall (2008) and others trace the history of American prosecutors from colonial times to the present. All describe the 19th Century transition from the use of private prosecutions by remedy-seeking crime victims to the system of public prosecutions. Davis[62] particularly emphasizes dangers inherent in the increasing power and discretion ceded to public prosecutors as the public system evolved, and contends that prosecutors who are directly elected by voters are actually insulated from accountability. The position of district attorney in New York City was an elected office throughout the time period covered by this study. The chapters on the cyclical scandals explore political circumstances in New York surrounding the cyclical scandals. Some of those circumstances reflect on whether particular prosecutors chose to tread lightly or move aggressively on matters of police corruption. Covering more than one hundred years, the present research spans most of the history of the development of the modern prosecutor's office. The surges in urbanization, immigration, and crime that spawned the creation and growth of the NYPD in the late 1800s, according to Astor[63] and others, also created more work for New York's district attorneys. McDonald[64] sees several developments of that era that directed more authority and discretion to prosecutors, such as professional police forces, warrantless arrests, and more case dispositions by dismissals and guilty pleas.

Coles[65] outlines how most American prosecutorial offices followed the felony case processor model through much of the twentieth century. Rooted in the Progressive movement

and reinforced with reports of the Wickersham Commission in 1931 and the President's Crime Commission in 1967, the felony case processor model encompasses numerous elements, including the prosecutor seeking to achieve maximum felony conviction rates and usually receiving cases passively instead of proactively pursuing them. Coles also notes that the independence and prestige of prosecutors under this model can create conflicts with police. If fewer police are prosecuted between the cyclical scandals compared to during the scandals, then the felony case processor model may suggest that police corruption cases are less likely to be prosecuted while the prosecutor passively awaits delivery of a potential case (especially if the usual case delivery route is through the NYPD). Further, police cases that are difficult to prove might be avoided by the prosecutor who seeks to maximize felony conviction rates under the same model. With added public and political pressure during a corruption scandal, the prosecutor may be inspired to prosecute cops despite other concerns.

Worrall points out that prosecutors have been viewed as running "closed shops" that were isolated from outside scrutiny and that engaged in little cooperative effort with police.[66] Jacoby describes how long-term changes in the criminal justice system separated the functions of police and prosecutors to the point that the two sides grew distrustful of each other despite a "theoretically shared interest."[67] She notes, for instance, that arresting officers tend to overcharge offenders for reasons that may include the lower standard of proof required at arrest and because officers are administratively rewarded for making arrests for more serious crimes. On the other hand, prosecutors tend to reduce charges, perhaps because of distrust of the police decision and awareness of the higher standard of proof required in court. Worrall contends that a lack of cooperation between prosecutors and police has continued until quite recent developments

toward community prosecution. Ultimately, Jacoby sees police and prosecutors making adjustments and working together in a "symbiosis."[68]

The underlying common interest between police and prosecutors suggested by Jacoby can be disrupted in prosecutions of allegedly corrupt cops. In a routine criminal case the police and the prosecutor essentially want a similar outcome, which is some manner of successful prosecution of the offender. But in a case of alleged criminal conduct by a police officer, a successful prosecution may not be the outcome desired by many police officers and, perhaps, even the police administration. McDonald describes how the police dominate the "front end" of conducting investigations and effecting arrests in the justice system.[69] Many of the scandal-related prosecutions of police did not begin in that routine manner. Instead, much illegal police conduct came to light through press reports or disclosure through commission investigations and hearings, after which prosecutions might occur. So police prosecutions can violate the norms of the workings between police and prosecutors described by Jacoby and McDonald.

More specifically, the charging decision of a district attorney is an area in which prosecution of a police officer may fall outside common practice. Jacoby describes four general policies that are not mutually exclusive that a prosecutor may use in making the charging decision: (1) the Legal Sufficiency policy, which simply looks at whether the elements of the crime can be established, (2) the System Efficiency policy, which considers a need to ration the resources of an overburdened criminal justice system, (3) the Defendant Rehabilitation policy, which diverts many offenders away from the criminal process, and (4) the Trial Sufficiency policy, which assesses whether a charge can be proven at trial. Jacoby uses these policies to anticipate which cases will be prosecuted, with what charges, and to what disposition. Her policies may help explain the circumstances and outcomes of prosecutive decision making in

scandal-related police prosecutions. For instance, the lack of courtroom success for prosecutions brought in the 1890s scandal might suggest that the district attorney used the Legal Sufficiency policy in order to bring a large number of cases when politically pressed by the burgeoning scandal, and most of those cases turned out to be too weak to survive the court process. Similarly, pressures created by a police scandal may change the prosecutor's determination of where to devote resources under the System Efficiency policy. This apparently occurred in the 1990s scandal as the Manhattan District Attorney's Office quickly found the resources to create a new public corruption unit.

With the possible exception of the Defendant Rehabilitation policy, Jacoby's policies rely on the prosecutor's evaluation of the evidence in any particular case. Research shows that the nature of evidence available to prosecutors evolved to include recorded conversations, video cameras, and more cooperating cops in the two most recent scandals of the 1970s and the 1990s. Adhering to the cautious Trial Sufficiency policy becomes easier as more convincing evidence becomes available.

With similarities to Jacoby's four policies, Utz[70] analyzes the exercise of prosecutorial discretion by describing prosecutors' offices as following an Adversary Model or a Magisterial Model. Under the Adversary Model, the prosecutor seeks full enforcement of the law and exercises limited discretion. Under the Magisterial Model, the prosecutor exercises more discretion in closely scrutinizing the merits of a case and engaging in more negotiation to resolve cases. Utz applies these models by comparing two county prosecutors' offices in California. Bringing cases against police might fall so far outside of the routine workings of a prosecutor's office, particularly during the relative frenzy of a scandal, that Utz's models are difficult to

apply. The oft-criticized discretion exercised by the appointed special prosecutor in the 1970s, however, might fit in Utz's Adversary Model.

Miller,[71] in a report for the American Bar Foundation, describes the prosecutorial charging decision as requiring three determinations: (1) evaluation of the proof of guilt, (2) consideration of whether prosecution is in the interest of the community, and (3) selecting the particular crimes to charge. Miller's criteria for the proof of guilt determination are quite flexible, so one prosecutor might only require proof of probable cause of a police officer's offense while another might insist on proof beyond a reasonable doubt before choosing to prosecute. As for the interest of the community, a prosecutor might give pause before launching an aggressive investigation of a police department because of the potential for a deleterious effect on the community from a disrupted police department.

Albonetti[72] focuses on organizational decision making and suggests that prosecutors make their decisions with a view toward avoiding uncertainty. The exercise of prosecutorial discretion, according to Albonetti, is an attempt by prosecutors to resolve situations of uncertainty and achieve low-risk outcomes. This avoidance of uncertainty may explain a historical reluctance of district attorneys to prosecute NYPD officers because of risks carried in potential outcomes of public reaction, political ramifications, and police relations, in addition to the uncertainties of court dispositions. The report of Knapp Commission of the 1970s emphasized this reluctance by the district attorneys.

Relative to prosecutions of police, a critically important development of fairly recent history has been the expansion of federal prosecution of criminal offenses, sometimes called the "federalization" of criminal law. Miller and Eisenstein[73] describe how the playing field for federal prosecutors began changing drastically around 1970. They cite a series of omnibus crime

bills in Congress that expanded the federal criminal code and increased the jurisdictional overlap between federal and state prosecutors. Even though the increased authority was given by Congress only to federal prosecutors, Miller and Eisenstein contend that state prosecutors also gained power by being able to coordinate enforcement with federal prosecutors and achieve longer sentences for offenders by threatening federal referral in plea bargaining. Miller and Eisenstein's assertions held true in New York in the 1970s and 1990s, as federal prosecutors stepped boldly into prosecuting city cops and the state prosecutors became more active either by working with or competing with the feds.

Police and Corruption

Palmiotto[74] describes a variety of police misconduct, ranging from sleeping on duty to improper use of deadly force, under a broad category of "police wrongdoing." He uses the more specific category of "wrongdoing for material gain" to cover acts of police corruption.[75] Sherman acknowledges that "corrupt police behavior" might encompass a "multitude of sins," but states a preference for limiting a definition of police corruption to acts that serve an officer's personal interest.[76] Goldstein similarly defines police corruption as "acts involving the misuse of authority by a police officer in a manner designed to produce personal gain for himself or for others."[77] Virtually all of the cases of police prosecutions related to the cyclical scandals involved conduct falling within these definitions of police corruption. Certainly, some of the most serious police behavior that might not be classified as police corruption under these definitions has occasionally prompted prosecutions and touched off major public scandals in the NYPD outside of the twenty-year cyclical scandals. The assault on Abner Louima in 1997 and the shooting of Amadou Diallo in 1999 are examples since the last cyclical scandal in the 1990s.

Fogelson[78] examines in detail the history of urban police in the United States. He sees the Lexow Committee hearings, along with numerous corruption investigations in other cities, as contributing to the Progressive movement's backing of police reform. That initial wave of reform lasted until approximately 1930 and focused on centralization of authority in police departments, but was largely undermined by entrenched interests that kept real control of policing at the level of the local captain or political leader. After 1930, according to Fogelson, reform efforts developed more from within police departments according to the evolving professional model, although forms of corruption remained undisturbed while public confidence in the police eroded into the 1970s.

Chapters about the cyclical scandals note the linkage between the nature of NYPD corruption, as revealed in the scandals and prosecutions, and the social and political circumstances of the time in New York City. Walker[79] describes the urbanization-social control theory, whereby American policing evolved in the nineteenth century in reaction to social disorder resulting from urbanization and industrialization. Walker, though, criticizes that theory for overlooking conflicting views of what sort of social order was desired and for suggesting that the police assumed their task in a neutral manner. To fashion a hybrid alternative theory, Walker borrows from a Marxist view of conflict between a working class gaining expression through political machines and an elite class seeking police reforms. Much of the motivation for reformers, according to Walker, arose from police undermining the intentions of laws by lack of enforcement. This conflict between the interests of the elites and of the working class was particularly apparent in the cyclical scandal of the 1890s.

Kappeler, Sluder, and Albert[80] present a history of American police deviance that suggests a division in a timeline at approximately 1920. In the pre-1920 era, according to the

authors, individual officers had broad discretion, and corruption focused on collections from overlooking enforcement of vice laws. For post-1920, they note the growth of the professional model of policing while describing excessive force used by police across the decades, and also recognizing eruptions of corruption scandals in many cities. The authors devote more attention to attempting to explain underlying reasons for police deviance. They see misconduct stemming from the opportunities for deviance inherent in police work compounded by social structural factors that impose laws and enforcement requirements. They explicitly reject the "rotten apple" explanation that police deviance arises from the character of a few individual officers. Techniques of neutralization as posited by Sykes and Matza[81] are applied by Kappeler, Sluder, and Albert to police officers as ways for the officers to justify deviant conduct. They mainly focus on police violence, but they cite neutralization techniques of denying that the deviant conduct caused injury and denying the legitimacy of the victim, which seem particularly applicable to corrupt officers receiving payoffs. Deviant cops stretched neutralization techniques as far as possible in the 1990s era when, as noted by the Mollen Commission, aggressive police misconduct was justified by some to show they were "in control" of high-crime neighborhoods and as "vigilante justice" to impose extralegal penalties on drug dealers and others.[82]

Sherman[83] dismisses the suggestion that police careers attract individuals who are somehow predisposed toward corruption. Rather than a corrupt officer being a rotten apple, Sherman contends, an officer's affiliation with other officers leads to a process of involvement with increasingly serious forms of misconduct. In a hypothetical set of six stages of misconduct, Sherman places minor "perks" (free meals, for example) at one end of the spectrum and accepting narcotics-related bribes at the other end. Of significance to the cyclical scandals, Sherman states that a police officer's conduct may stop at a middle step by drawing moral

distinctions between degrees of illegal conduct. That is, a corrupt officer might decide to take gambling-based bribes but not narcotics-based bribes.

In another work Sherman[84] presents an insightful analysis by breaking down police corruption into three types. His description of Type I corruption uses the rotten-apple metaphor, with corrupt individual officers being the rotten apples and corrupt groups of police described as rotten pockets. This is the minimal level of corruption that can exist in any department, and police administrators are most willing to admit to having rotten apples because that sort of corruption reflects less on the whole department. Type II corruption involves widespread, but unorganized, corruption. Sherman finds this corruption most common in developing countries, and describes much of the conduct as "nondistortive" because police receive payments for legitimate functions that would have occurred anyway.[85] Type III corruption is pervasive and organized in the department. Sherman describes how a new police officer will learn that Type II corruption lets the officer keep illicit payments, while Type III corruption requires that the officer distribute illicit payments to other officers and superiors.

Griffin and Ruiz[86] work with the common usages of the terms "rotten apple" and "rotten barrel," with the rotten apple being the police officer predisposed toward misconduct and the rotten barrel describing the occupational conditions that encourage misconduct. Feinberg[87] takes a slightly different approach to fit the rotten apple/barrel metaphor with the findings of the Knapp Commission. She likens the rotten apple to the Knapp Commission's "meat eater"—an inherently corrupt person who should have been kept out of the NYPD. The rotten barrel, according to Feinberg, contains both the inherently corrupt and the "grass eaters" who join the misconduct because of their moral weakness and susceptibility to peer pressure.

Wilson calls the rotten apple theory a "plausible half-truth" that becomes less plausible in the structurally corrupt "barrels" of urban police departments.[88] Examination of the cyclical scandals and the related prosecutions shows entrenched rotten barrel problems in the NYPD through the 1970s scandal. Indeed, Sherman contended in the wake of Knapp reforms that the NYPD had become "organizationally honest" and "corruption no longer appears to be widespread."[89] The 1990s scandal, however, may have suggested a revived rotten apple theory to explain the police misconduct.

Sherman[90] explains that some constant aspects of police work contribute to corruption. For instance, police officers can exercise extensive discretion in their work, which usually occurs with low visibility to the public. Of variable factors that affect corruption, Sherman sets forth fourteen propositions. For example—and of particular applicability to New York City—Sherman proposes that there is less corruption in places with lower levels of racial, ethnic, and class conflict. Such conflict between police and residents of higher-crime neighborhoods became most apparent in the 1990s cyclical scandal. In two of his propositions, Sherman touts the corruption-fighting benefits of police departments having internal affairs units. The NYPD's internal affairs unit took heavy criticism for its ineffectiveness leading up to the 1990s scandal.

Gardner[91] sees police corruption as a result of supply and demand for illicit goods or services in which payoffs allow the activity to continue, and he posits that corruption can be reduced but never eliminated. Lundman [92] describes how frequent police wrongdoing is more likely to assume a pattern in that a police department administratively tolerates the conduct and new officers become socialized in the operating norms that accommodate the misconduct. Burnham believes that NYPD officers are gradually subverted by a work environment that progresses from opportunities to save money (accepting free services) to opportunities to make

money (conducting shakedowns). He even describes an extorting police officer as a "victim" because civilians treat police in a way that pushes the officer toward accepting payments.[93]

Vice-based offenses such as prostitution, gambling, drugs, and alcohol violations present abundant corruption problems. Many, but not all, observers refer to these types of offenses as victimless crimes. The cyclical scandals and related prosecutions focused on police corruption arising from civilians participating in these sorts of offenses. In Sherman's six stages of the moral descent of a police officer into corruption,[94] the last five stages all involve accepting money or benefits in exchange for permitting victimless crimes to continue. Since these stages are gradual, thus encouraging a steady decline, Sherman proposes legalization of gambling and prostitution in order to remove steps from the moral descent and make the drop more abrupt and less inviting. Police who take money from persons engaged in illegal vices might take comfort in believing that taking money from a (to some degree) consenting victim is not an immoral offense and might gain confidence knowing that the victim is unlikely to report the offense. Abrams[95] points out that crimes having consenting victims and crimes involving conduct that some find morally ambiguous are most likely to be declined for prosecution. The 1890s scandal, for instance, featured a district attorney who might have preferred to decline charging some police cases, but public pressures demanded the prosecutions and trial juries returned many acquittals.

Bracey[96] uses the linkage of vice enforcement with urban police corruption as an example of how police corruption is a natural phenomenon that may actually fulfill some societal needs. The police officer who takes a bribe from an offender has imposed a penalty on that person that the legitimate justice system might not have been able to impose, while the officer's conduct also allows the offender to continue to provide desired (if illegal) goods and services to the public. In a similar manner, Sisk[97] presents an economist's view that vice-based police bribes amount to

illegal activity taxes that are earmarked for police salaries; that is, collected bribes count as part of an officer's overall compensation. Much of Bracey's analysis involves offenses that might be a step below the serious criminal vices, such as motor vehicle ordinances, parking violations, and business regulations. Bracey further sees police corruption as promoting solidarity among officers and providing training to new officers. These functions of corruption, according to Bracey, contributes to its resistance to controls.

Kappeler, Sluder, and Albert[98] note that the effectiveness of a police department's internal affairs unit can vary greatly depending on how the personnel in the unit respond to allegations of wrongdoing. They contend that Los Angeles maintained a failed internal affairs unit, while Grennan[99] praises the post-Mollen Commission work of the NYPD's internal affairs bureau. An internal affairs unit's functions can be enhanced by use of particular investigative techniques. Kappeler, Sluder, and Albert tout early-warning systems that can keep track of all types of complaints made against officers with the possibility of interventions by the department before situations become more serious. Fyfe and Kane[100] describe the NYPD's internal affairs bureau's extensive use of integrity tests that may employ investigative sting techniques to test officers' responses in particular situations. These techniques became more important in prosecutions in the 1990s scandal, but only after the Mollen Commission chastised the internal affairs unit for years of ineffectiveness.

The cyclical scandals occurred both before and after civil service reforms that lessened the influence of corrupt politicians who had previously controlled police appointments and promotions. One revelation of the 1890s scandals was the price list of what it cost to be appointed to the NYPD and then to be promoted. Goldstein[101] suggests that some police actually increase their illicit activities because civil service reforms loosened restraints by local

politicians. Walker cautions that police reforms often carry the "pitfalls of unintended consequences."[102]

Regarding external controls of police corruption, Anderson, Dyson, and Burns[103] note that independent civilian review boards oversee only a handful of police departments. Such boards vary in their mandates and composition, with most lacking subpoena power and empowered only to make recommendations. Still, Kappeler, Sluder, and Albert see value in the greater openness of the civilian process compared to complaints handled within police departments. Leading up to the cyclical scandals of the 1970s and 1990s, Mayor Lindsay and Mayor Dinkins promoted civilian review boards for the NYPD and received hostile reactions from many cops.

Prosecutions of Police

While administrative proceedings as part of a police department's internal corruption controls might move faster and with greater assurance of success compared to the external control of criminal prosecutions, only criminal prosecutions can bring criminal sanctions. Criminal sanctions become more appropriate as retribution for police misconduct when the conduct becomes more serious, which was the case for the scandal of the 1990s. In addition, the public nature of criminal proceedings may have value to more fully expose corruption to the press and public, while departmental proceeding are generally conducted behind closed doors. An open question is whether the prosecutions (or the threat of prosecutions) have a deterrent effect to discourage police corruption.

Walker[104] explains four underlying assumptions for deterrence theory: (1) potential criminals must be aware of the criminal penalties, (2) offenders must feel that the penalties

should be avoided, (3) offenders must believe there is a real risk of the penalties being imposed, and (4) the offenders act rationally in deciding whether to offend. To apply these assumptions to police officers, and to compare police officers with other potential criminal violators, police officers would seem particularly aware of criminal penalties and would want to avoid them. A police officer has a desirable job and, in modern times, has to pass some level of screening to obtain that job, so a police officer might be a stronger candidate to be a rational actor than another potential criminal. The major sticking point in these deterrence assumptions is the perception by the police officer about whether criminal penalties are a genuine risk. Throughout the cyclical scandals, much of the police wrongdoing was conducted quite openly and without apparent concern for facing penalties. That brazenness could be attributed to victims who did not tend to report the misconduct and fellow cops who maintained the loyalty of the blue wall of silence.

Goldstein[105] is skeptical that prosecutions of police are an effective deterrent against corruption. If a corrupt officer perceives a low likelihood of apprehension or that penalties upon apprehension are minor, then deterrent value drops. Goldstein, though, sees ways to adjust the deterrence calculation. He recommends aggressive investigative tactics such as undercover operations and "turning" another corrupt officer to cooperate to increase the likelihood of apprehension. He acknowledges that corrupt officers will vary in how they respond to the fear that their wrongdoing will be detected. One possibility, according to Goldstein, is that fear of apprehension can be generated from a single highly publicized investigation to bolster the deterrent effect. He admits that criminal prosecutions of police tend to have high acquittal rates. Further, he asserts that there is particular reluctance to aggressively prosecute and punish corrupt police when there are corruption issues among prosecutors, judges, and other players in the

criminal justice system. Research shows aspects of Goldstein's positions on deterrence in the cyclical scandals: the investigative commissions worked hard to maximize publicity for their hearings and findings, and criminal cases used more cooperating cops and modern investigative techniques in the scandals of the 1970s and 1990s. Concerns about corruption elsewhere in the justice system encouraged the decision to establish the position of a special prosecutor in the 1970s, but the special prosecutor's efforts in nonpolice cases ran into difficulties that contributed to the decline of that office.

In a nuts-and-bolts manner, Beigel[106] describes challenges faced by prosecutors in police corruption cases. Although his article does not address the NYPD cyclical scandals, his observations of prosecutorial problems with uncooperative police officers and weak evidence fit cases in all of the cyclical scandals.

Sherman[107] recognizes the prosecution of police as an external control against corruption, and particularly cites the role of federal prosecution of local police. Still, he concludes that internal control (i.e., addressing corruption by administrative and investigative steps from within a police department) is more critical than the external control of prosecution. In later work,[108] Sherman emphasizes the shortcomings of local prosecutors (district attorneys) in the prosecution of police corruption, although he still sees prosecution as one of the essential stages of a police scandal. Research shows federal prosecutions becoming increasingly important as the cyclical scandals moved into the 1970s and 1990s, and the question of whether district attorneys could adequately prosecute police produced opposite answers from the investigative commissions of the those years.

Sherman does look briefly at reasons for variations in the extent of prosecutions in police scandals. Examining four scandals that occurred in four cities across the United States, including

the 1970s New York scandal, he concludes that prosecutions vary according to differences in the "victim or non-victim nature of the offense."[109] He points out that criminal prosecutions did not touch on a large portion of the misconduct revealed by the Knapp Commission, which was consistent with the "non-victim nature" of the offenses. Sherman's analysis blurs the distinction between the common notion of a victimless crime, such as prostitution, and a crime for which there is simply no available witness/victim. Clearly, a limit on the reach of prosecutions comes from the need for witnesses and other evidence that can be presented in court. An extreme example occurred in the 1950s cyclical scandal when the prosecution's star witness began his testimony in court, but then refused to continue.

Kutnjak Ivcović[110] largely relies on the findings of the Knapp Commission, Mollen Commission, and the 1974 Pennsylvania Crime Commission to describe the ineffectiveness of using a complex web of multiple entities to attempt to control police corruption. Prosecutions are hampered, she notes, by their reactive nature and focus on individual cases, and she points out inadequacies of data sources about state and federal prosecutions of police. Kutnjak Ivcović ultimately proposes creation of an independent integrity agency that could provide constant oversight of a police department rather than scrutiny of a sporadic nature prompted by scandals or publicity. The debate over the formation and the format of such an agency was intense in the cyclical scandals of the 1970s and 1980s.

To summarize the review of literature, numerous publications have recited the facts of the cyclical scandals, and some works have told stories focused on particular persons involved in the scandals. With a few exceptions that usually involve the most sensational trials, however, the literature has largely overlooked the criminal prosecutions of police related to the scandals. Literature dealing more generally with police corruption devotes some attention to the role of

prosecutions, but there appears to have been no thorough evaluation with analysis and comparison over time of prosecutions brought against police, as undertaken in the present research.

Notes

[1] For five of the six cyclical scandals, the names of the heads of the investigative entities are usually attached to references to the investigations or scandals (the Lexow Committee, the Curran Committee, the Seabury investigation, the Knapp Commission, and the Mollen Commission). The exception is the cyclical scandal of the 1950s which is commonly referred to as the Harry Gross case, after the bookie that cooperated against police. The 1950s scandal is also sometimes called the Helfand investigation, for Assistant District Attorney Julius Helfand who steered the grand jury investigation and subsequent prosecutions.

[2] Charles H. Parkhurst, *Our Fight with Tammany* (1895, reprint, Freeport, NY: Books for Libraries Press, 1970).

[3] Charles W. Gardner, The Doctor and the Devil or Mid-Night Adventures of Dr. Parkhurst (New York: Gardner, 1894).

[4] Richard Zacks, Island of Vice: Theodore Roosevelt's Doomed Quest to Clean Up Sin-Loving New York (New York: Doubleday, 2012).

[5] Warren Sloat, A Battle for the Soul of New York: Tammany Hall, Police Corruption, Vice, and Reverend Charles Parkhurst's Crusade Against Them, 1892–1895 (New York: Cooper Square Press, 2002).

[6] Gerald Astor, *The New York Cops: An Informal History* (New York: Scribner, 1971).

[7] Lloyd Morris, Incredible New York: High Life and Low Life of the Last Hundred Years (New York: Random House, 1951).

[8] Timothy J. Gilfoyle, City of Eros: New York City, Prostitution, and the Commercialization of Sex (New York: Norton, 1994).

[9] Samuel Walker, *A Critical History of Police Reform* (Lexington, MA: Lexington Books, 1977).

[10] Edwin G. Burrows and Mike Wallace, *Gotham: A History of New York City to 1898* (New York: Oxford University Press, 1999).

[11] Jay S. Berman, Police Administration and Policy Reform: Theodore Roosevelt as Police Commissioner of New York (New York: Greenwood Press, 1987).

[12] Andy Logan, *Against the Evidence: The Becker-Rosenthal Affair* (New York: McCall, 1970), 83.

[13] V. O. Key, Jr., "Police Graft," *American Journal of Sociology* 40, no. 5 (1936): 624–636.

[14] The Metropole Hotel building still stands at 147 West 43rd Street, now called the Casablanca Hotel.

[15] People v. Charles Becker, 215 NY 126 (1915); People v. Charles Becker, 210 NY 274 (1914).

[16] Mike Dash, Satan's Circus: Murder, Vice, Police Corruption, and New York's Trial of the Century (New York: Crown, 2007).

[17] Stanley Cohen, The Execution of Officer Becker: The Murder of a Gambler, the Trial of a Cop, and the Birth of Organized Crime (New York: Carroll & Graf, 2006).

[18] Ibid., 222.

[19] Andy Logan, Against the Evidence: The Becker-Rosenthal Affair (New York: McCall, 1970).

[20] Jonathan Root, One Night in July: The True Story of the Rosenthal-Becker Murder Case (New York: Coward-McCann, 1961).

[21] Vina Delmar, *The Becker Scandal: A Time Remembered* (New York: Harcourt, Brace & World, 1968).

[22] Astor, The New York Cops, 1971.

[23] Walter Chambers, *Samuel Seabury: A Challenge* (New York: Century, 1932).

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Chapter 2

Methodology and Research Questions

Methodology

The cyclical scandals from the 1890s to the 1990s are approached as six case studies. A case study approach accommodates research necessary for appreciation of the historical contexts of the scandals, as well as gathering data regarding the prosecuted police officers and addressing the research questions.

Case Study Design

Zimring laments that criminal justice research includes "much less attention than is needed to the political and governmental dimensions of criminal justice."[1] The case study design of this research produces the sort of information that accommodates the broader perspective that Zimring suggests. King, Keohane, and Verba advise, "Case studies are essential for description, and are, therefore, fundamental to social science. It is pointless to seek to explain what we have not described with a reasonable degree of precision."[2]

Descriptions of the underlying political and social circumstances of the scandals add perspective to the scandal-related prosecutions. For instance, the political aspirations of Governor Franklin Roosevelt loomed over the New York City corruption scandal of the early 1930s and provide context to the prosecutions of members of the NYPD's vice squad. More generally, a corrupt officer's crime might be better understood if seen as a product of its historical era. In turn, perhaps in cumulative effect with similar crimes, the crime itself can leave

an imprint on the era.[3] The case-study approach can capture both sides of the interplay between the prosecutions and historical contexts of the scandals.

Yin[4] states a preference for multiple- over single-case designs partly because of the enhanced potential for external generalizability. While each of the NYPD scandals presents circumstances worthy of separate study, examination of all six scandals allows comparisons. On the other hand, Stake writes less favorably than Yin about comparisons in case studies, contending that comparison glosses over the "uniquenesses and complexities" of the individual cases. Stake does, however, describe the "collective" case study in which a number of cases are studied in the hope of gaining greater insight into a phenomenon, and he acknowledges that "multiple cases of intrinsic interest" can yield useful comparisons.[5] Ragin notes that most research designs use multiple cases because "ideas and efforts may be linked in many different ways."[6]

George[7] suggests that appropriate cases for study be selected after consideration of the research problem and the elements, and Ragin goes even further in advising that the researcher will not know the cases until the research is finished. In contrast, cases in the present research are selected according to the nature of the inquiry. The remarkable phenomenon of the twenty-year cycle for NYPD scandals has been widely recognized,[8] perhaps elevating the cyclical scandals to the level of intrinsic interest that Stake describes for fruitful comparisons. George's essential requirement that all of the cases be the same class of event is certainly met. The six cyclical scandals are sufficiently different from other NYPD scandals to warrant their separate consideration, but they are sufficiently similar to each other to accommodate helpful comparisons.

Peters[9] advises that focus on the central elements of cases, rather than the smaller details of each case, may facilitate the formulation of generalizations from the comparisons. The central elements of the scandals, for purposes of this study, are the circumstances and dispositions of the prosecutions. Scrutiny of the prosecutions will produce the observations of the research design. King, Keohane, and Verba[10] point out that the observations in case study research drive the information produced by the research, so η normally refers to the number of observations rather than the number of cases studied. In the present research, η consists of the number of prosecuted police officers.

Finding patterns and making comparisons are enhanced because there are consistencies in factual and procedural elements of prosecutions of police even over the period of one hundred years. More importantly, all of the defendants in the scandal-related prosecutions were members of various ranks in the NYPD.[11] Most of the corrupt activity related to the cyclical scandals involved police officers misusing their positions to collect money from persons involved in illegal activities. In every case, the prosecutor evaluated evidence. Almost all of the charges brought in state and federal court resulted from grand jury action. For cases that went the distance at trial, petit juries made decisions based on the constitutional standard of proof beyond a reasonable doubt. In all, the prosecuted police officers were sufficiently similar as units of analysis to merit comparison despite the century-long time frame. Regarding case comparisons, George cautions that "the cases must all be instances of the same class or universe; one must not mix apples, oranges, and pears."[12] Comparing the prosecuted NYPD officers of the cyclical scandals should be a comparison of apples to apples, albeit (rotten) apples of different eras.

Data Collection and Research

The selection of the six cyclical scandals as cases provides two benefits for data collection. First, the scandals spurred prosecutions of police. As the investigative commissions uncovered corruption, with the public and media demanding action and prosecutors responding, the number of prosecuted police officers (η) grew. The Knapp Commission Report pointed out the relatively small number of cops prosecuted before the scandal, and then an unprecedented number of cops were prosecuted after the scandal broke. Second, scandal-related prosecutions tended to receive more public attention than police prosecutions at other times. For instance, low-level bribery prosecutions of police that were part of the 1890s scandal and covered extensively in the press probably would not have garnered such coverage absent the association with the greater scandal (if, indeed, the officers were prosecuted at all).

The public nature of a criminal prosecution facilitated the collection of data. Many aspects of prosecutorial functions transpire outside of public scrutiny. For example, a decision by a prosecutor not to pursue charges in an investigation occurs routinely as an exercise of prosecutorial discretion. The reasons for that decision may include a belief that the evidence is weak, that a jury will find the case unappealing, or that conduct in the investigation raises troublesome legal issues. Worse, the prosecutor may act out of bias or other improper motivation. Those sorts of factors are difficult to uncover and examine because prosecutors usually make such decisions in private. When a case is brought to court, on the other hand, the actions of a prosecutor move into public view. The defendant has been named, the charges have been specified, and the court proceeding will eventually reach a resolution. The public proceeding is available for scrutiny and data collection.

Each of the scandals produced at least one formal report, and all are readily available.[13] The searchable online historical files of the *New York Times* provided the most extensive and

accessible information about the police prosecutions. It carried contemporaneous accounts of the majority of the scandal-related police prosecutions. Then, as now, police prosecutions were highly newsworthy. Gaps in coverage still arose, however. A story about a multi-defendant indictment might mention the names of all charged police officers, but subsequent stories might not report on the dispositions as to all of the defendants.

While the *New York Times* is the only New York newspaper to have such an extensive searchable database, other periodicals often provided information missing from the *New York Times* about prosecutions. The Chronicling America database of the Library of Congress gives access to some other New York newspapers, such as the *New York Sun*, the *New York World*, and the *New York Tribune*. Those bygone papers added interesting perspectives when they were active players rather than detached observers as the corruption scandals unfolded. Unfortunately, the Chronicling America database only covers to 1922, and it has more limited searching capabilities than the *New York Times* historical files. The Brooklyn Public Library offers online access to the *Brooklyn Eagle* newspaper with some search capabilities. Although the *Brooklyn Eagle* only published until 1955, it played a major role in the cyclical scandal of the 1950s, so access to the paper's coverage of the scandal was important. For the 1970s and 1990s scandals, conventional internet search engines often yielded stories from the *New York Post* and the *New York Daily News* tabloids. On a few occasions, newspaper-based research needed resources that were not available online. For instance, issues of the *Staten Island Advance* newspaper available on microfilm from the New York Public Library carried informative stories about the prosecutions of several Staten Island-based cops charged in the 1970s scandal.

Conventional legal research yielded published judicial opinions, available online or in aging bound volumes. These opinions arose most often from appellate courts, and only

occasionally from trial courts. If a police officer was convicted after trial, an appellate court usually considered the case and sometimes published an opinion. Such published opinions often recited the procedural and factual histories of the cases, so the information from newspapers and other sources could be checked and supplemented.

As for trial court records, docket entries for the Court of General Sessions and the Court of Oyez and Terminer preserved on microfilm at the New York City Department of Records were not helpful because they could not be searched and those examined were largely illegible. In seeking information on case dispositions from state and federal courts, the levels of assistance from the respective clerk's offices varied considerably. Commonly, a clerk's office responded that no records of the disposition of a particular case could be found. Sealing or expungement of records, lost or destroyed files, record keeping deficiencies, or even past improper handling of records to assist a cop-defendant might explain a present lack of records for old cases. Concededly, old filing systems might be confusing to a modern-day employee of a clerk's office. Records might be found under a docket number, a defendant's name, a lead defendant's name, the judge's name, or the court "part" (in the terminology of the New York State system) that handled the case. The clerk's office of New York County seemed most helpful and adept at finding case dispositions. Only one county clerk's office flat-out refused to look for case dispositions, claiming an unconvincing legal reason for that response. Research located information about the cases elsewhere.

Methodological Issues

The research questions and subquestions require defining a number of terms and concepts. First, and most simply, a "criminal prosecution of police" is a court case[14] alleging

criminal charges against one or more police officers or former police officers.[15] A "police officer" is a law enforcement officer who is a noncivilian employee of the NYPD. This includes individuals holding titles of officer, patrolman, sergeant, detective, lieutenant, captain, and inspector, as well those holding an outmoded title such as watchman.

Whether a prosecution was "related" to a cyclical police scandal was determined on a case-by-case basis. With one exception, the various authorities tasked with investigating the cyclical scandals did not have prosecutorial powers. Some allegations of misconduct were directly referred to prosecutors by the investigating authorities, so it was simple to classify those matters as scandal related. Other prosecutions arose in the general atmosphere and publicity of a particular scandal, perhaps by prosecutors prodded or motivated by the scandal. The examination considered circumstances such as timing, public announcements, media coverage, evidence used, and the nature of charges to reach a reasonable conclusion as to whether a prosecution was related to a particular scandal. Reaching the conclusion was not difficult in most instances.

For many of the subquestions proposed below, the important unit of analysis is the individual police officer who is criminally prosecuted. An alternative method of counting prosecutions would be by indictment, rather than by defendant. Police officers were often charged in multi-defendant cases. Counting by defendant may carry more validity than counting by indictment because, for instance, a twelve-defendant case would seem undercounted if it amounted to only a single unit (one indictment) instead of twelve units (twelve charged officers). In addition, the outcome of a multi-defendant indictment could include a mix of dismissals, acquittals, and convictions, so counting by defendant is easier for tracking purposes.

The "outcome" of a prosecution focuses on whether it resulted in a conviction. A conviction could be by trial verdict (by jury or judge) or a guilty plea, and a nonconviction could

be by a not guilty verdict or dismissal. A dismissal could be prompted by action of the prosecutor, the judge, or an appellate court. Complications in some prosecutions were inevitable. Two indictments of a single officer might be resolved by a guilty plea to one and a dismissal for the other. A jury verdict could include a conviction on a minor offense, but an acquittal on the major offense. Despite some twists and turns in the dispositions of prosecutions, examination of individual cases allowed conclusions as to outcomes. For instance, a single police officer found guilty in one indictment and not guilty in another would be counted collectively as a conviction.

Some of the subquestions look into the nature of the illegal police conduct. The process of comparing criminal conduct seems simpler if charged offenses are compared rather than the underlying criminal conduct. For instance, a prosecution of Officer Smith for the crime of bribery would seem equally as serious as the prosecution of Officer Jones for the crime of bribery. Even this straightforward approach of comparing the charged offenses can produce some complications because New York's criminal code changed through numerous revisions over the course of a century, and federal law (under which some officers were charged) had different statutory provisions than state law.

More importantly, the underlying conduct of Smith and Jones could have been quite different. Smith might have accepted payoffs from gamblers eagerly seeking police protection, while Jones aggressively shook down gamblers for payoffs. Historical research into the underlying facts of misconduct almost always produced sufficient information to distinguish the conduct of two officers. Specifically, the examination of prosecutions related to each scandal looked at whether there was underlying civilian conduct (usually an illegal vice) associated with the alleged police misconduct.

For the approximately four hundred scandal-related prosecutions, the compilation of information followed three steps. First, a prosecution was determined to be scandal related, as described above, in order to become part of the data set. The unit of analysis for a prosecution was each charged officer-defendant. Second, available information for each prosecution was compiled. As available, information included the underlying facts of the offense, rank or other status of the defendant, and other information sought in the research questions and subquestions. Third, the outcome of each prosecution was determined. The simplest description was the dichotomous measure of "conviction" or "no conviction" as an indicator of the success of the prosecution from the prosecutor's point of view. Convictions could be by plea or trial, and trials could be by jury or nonjury. Nonconvictions could be by dismissal, trial verdict, or reversal on appeal.

Research Questions

Research suggests areas of comparison between the cyclical scandals that explore why the scandals happened, the role of criminal prosecutions in the scandals, and perspectives for future scandals and prosecutorial responses. The following three research questions essentially track the chronological progression of the prosecutions related to each scandal—the inception of the scandal, the prosecutorial responses, and the outcomes of those responses. Each research question contains more specific subquestions.

Research Question #1: How did social and political contexts surrounding the six cyclical scandals of the New York City Police Department contribute to the inception of the scandals and the subsequent responses?

(a) Did police misconduct reflect city demographics or social divisions of the time?

(b) How did political circumstances affect the nature of the responses to police misconduct?

(c) Does history explain the phenomenon of the twenty-year cycles or suggest prospects for another cyclical scandal?

Research Question #2: How did the prosecutorial responses vary in the six cyclical scandals of the New York City Police Department?

(a) How many police officers, and of what rank, were criminally prosecuted?

(b) What types of illegal police conduct were alleged in the prosecutions?

(c) Was there a prevalent type of illegal conduct by others underlying the alleged police conduct? For instance, if the alleged police conduct was bribery, were the bribe payers gamblers or drug dealers?

(d) What prosecutorial agencies brought charges?

Research Question #3: How did outcomes vary in the criminal prosecutions of police related to the six cyclical scandals of the New York City Police Department?

(a) Did the prosecutions raise common issues, such as witness recalcitrance or credibility?

(b) Were charges brought in state or federal court?

(c) Was disposition by dismissal, plea, or trial?

(d) What was the disposition? (including dismissal, acquittal, conviction, sentencing, and appeal).

(e) What do the outcomes suggest for the role of prosecutions in addressing police corruption?

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[1] Frank E. Zimring, "Criminology and Its Discontents: The American Society of Criminology 2007 Sutherland Address," *Criminology*, 46, no. 2 (2008): 263.

[2] Gary King, Robert O. Keohane, and Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research* (Princeton, NJ: Princeton University Press, 1994), 44.

[3] See for example, Amy Gilman Srebnick, *The Mysterious Death of Mary Rogers: Sex and Culture in Nineteenth-Century New York* (New York: Oxford University Press, 1995).

[4] Robert K Yin, *Case Study Research: Design and Methods* (Thousand Oaks, CA: Sage, 2003).

[5] Robert E. Stake, "Case studies," in *Handbook of Qualitative Research*, ed. Norman K. Denzin and Yvonna S. Lincoln (Thousand Oaks, CA: Sage), 242.

[6] Charles C. Ragin, "'Casing' and the Process of Social Inquiry," in *What is a Case?: Exploring the Foundations of Social Inquiry*, ed. Charles C. Ragin and Howard S. Becker (Cambridge: Cambridge University Press, 1992), 225.

[7] Alexander L. George, "Case Studies and Theory Development: The Method of Structure, Focused Comparison," in *Diplomacy: New Approaches in History, Theory, and Policy*, ed. Paul Gordon Loren (New York: The Free Press 1979).

[8] Feinberg, "Integrity and Corruption Control"; Sandler, *Police Corruption*; Eli B. Silverman, *NYPD Battles Crime: Innovative Strategies in Policing* (Boston: Northeastern University Press, 1999).

[9] B. Guy Peters, *Comparative Politics: Theory and Methods* (New York: New York University Press, 1998).

[10] King, Keohane, and Verba, *Designing Social Inquiry*.

[11] The police departments of the Transit Authority and the Housing Authority were absorbed by the NYPD in April 1995. No Transit or Housing cops were among those charged in the scandal-related prosecutions.

[12] George, "Case Studies and Theory Development," 55.

[13] Gabriel J. Chin, ed., New York City Police Corruption Investigation Commissions, 1894–1994 (Buffalo, NY: Hein, 1997).

[14] Social science research terminology may create confusion with legal terminology. A "case" in the case study method of research here refers to one of the cyclical scandals. A "case" can also refer to a prosecution as a legal proceeding filed in court or, more loosely, as an investigation that might lead to a future court filing. The prosecutorial cases against police officers also may

be considered “observations” within the case studies. How the term “case” is used should be clear from the context.

[15] Police officers often resigned or were dismissed from the NYPD before prosecutions of them were complete.

Chapter 3

The Lexow Committee–Era Scandal

> They are a lying, perjured, rum-soaked, and libidinous lot.
> —Rev. Charles Parkhurst preaching to his congregation about public officials, February 14, 1892.[1]

New Yorkers experienced milestones as the city approached the first cyclical scandal. The opening of the Statue of Liberty (1886) displayed the city's role in the world; a new building at 50 Broadway (1890) was later recognized as the first skyscraper and showed Manhattan's vertical future; the construction of the last Polo Grounds (1890) helped establish the city as a sports center and survived to welcome the Mets and the Jets in the 1960s; and the introduction of bottled beer by the F&M Schaefer Company (1892) would change the city's drinking practices.[2] New York's population of 1.5 million according to the 1890 census was approximately 50 percent greater than the populations of closest rivals Chicago and Philadelphia. Brooklyn, prior to the 1898 consolidation of Greater New York, was America's fourth largest city.[3]

New York seemed uncomfortable with its growing pains. Over 40 percent of the city's population was foreign born in 1890.[4] Although the ethnic-based mob violence of the Draft Riot (1863) and the Orange Riots (1870 and 1871) had subsided, the city did not adjust smoothly to newcomers and changes in city life. The legendary William "Boss" Tweed of the Tammany Hall machine of the Democratic Party lost his job after the second Orange Riot because influential New Yorkers concluded that "Tweed could not keep the Irish in line," according to Burrows and Wallace.[5] By that time, Tammany Hall derived much of its political strength at the polls from the Irish themselves, so the bosses had to both accommodate and control their constituents. For

political bosses to maintain their money-making corrupt apparatus while still managing the city in a manner satisfactory to a sufficient number of voters was a difficult balance. The political battles between Tammany Hall and its rivals would become a more prominent cause of the first cyclical corruption scandal than the corruption itself.

The horrific poverty of New York's lower classes caused both concern and distress among the middle and upper classes as "the wealthiest and the poorest crammed into about a dozen square miles" in New York.[6] Using advances in technology that allowed unposed indoor photographs, former police reporter Jacob Riis documented the deprivation in the lives of many New Yorkers. Riis's *How the Other Half Lives*, published in 1890, raised the consciousness of New Yorkers and contributed to the nascent Progressive movement, although his descriptions of overcrowded tenements, homeless children, drugs, and street violence were filtered through characterizations of racial and ethnic groups that are unnerving by today's standards. The underlying assumption was that those persons were not really Americans or, at least, they were decidedly different from the commonly accepted images of Americans. "The one thing you shall vainly ask for in the chief city of America," according to the empathetic observer Riis, "is a distinctively American community. There is none." Instead, he concluded, the city had turned into "this queer conglomerate mass of heterogeneous elements."[7]

Concern about the poverty of the lower classes combined with public action against signs of moral decay in the city. As historical novelist Caleb Carr commented about the era, "Every conceivable vice, it seemed, had a society in New York dedicated to its prevention."[8] Burrows and Wallace summarized, "In New York itself, the comfortable middle classes were finding the final decades of the nineteenth century a strange and perplexing time. They knew they lived amid unprecedented progress. Yet everywhere they beheld portents of danger: poverty, corruption,

licentiousness, militant unionism, political radicalism, open strife between capital and labor, and a surge of immigrants so vast and alien that it was hard to imagine what would become of the old Anglo-Saxon republic."[9] Those feelings of unease about the direction of the city fueled support for the antivice crusade of a prominent minister who took advantage of the various sources of anti-Tammany political sentiment and brilliantly targeted police corruption.

The Triggering Event

On February 14, 1892, Rev. Charles Parkhurst of the Madison Square Presbyterian Church delivered a scathing sermon attacking politicians and police. Parkhurst accused police of aiding illegal gambling, prostitution, and saloons because "your average policeman or your average police captain is not going to disturb a criminal" due to bribes paid according to "a scale of police taxation" that was "carefully graded" and "thoroughly systematized."[10] Eager newspaper reporters extensively covered Parkhurst's accusations the next day. Charles Gardner, who became the chief investigator to uncover corruption and immorality for Parkhurst, described the wildly contrasting public opinions about Parkhurst: to opponents "he seems a monstrous phantom, half snake, half divinity," while supporters "call him the Apostle of Reform and deify him."[11]

Parkhurst's sermon touched off a series of events and political maneuvers. The district attorney tried to call Parkhurst's bluff by promptly summoning him before a grand jury. Parkhurst admitted that he had no personal knowledge of his sermon's allegations, and the grand jury voted a public presentment that chastised Parkhurst. The minister fired back by personally participating in sensational nighttime tours of saloons, opium dens, and prostitution houses guided by investigator Gardner. On March 13, 1892, less than a month after his original sermon,

Parkhurst delivered another sermon revealing the "so course, so beastly, so consummately filthy" evidence that he had gathered.[12]

The Response

Parkhurst continued his efforts through 1892 and 1893, during which he received more respectful receptions from other grand juries and further publicity. In addition to his church duties, Parkhurst was the president of the Society for the Prevention of Crime, one of a number of organizations supporting civic reform backed financially by the city's Protestant elite, but Parkhurst needed more help to take his crusade to the next level.[13] Thomas Platt was one of Parkhurst's congregants and boss of the state Republican Party, which controlled the state legislature. Motivated by politics rather than religion, Platt grew disgruntled as his party lost ground to Democrats in city elections and, more particularly, slipped in the valuable patronage control of the NYPD.[14] In early 1894, the state legislature followed Platt's prodding and appointed a seven-member committee (five Republicans and two Democrats) chaired by Senator Clarence Lexow to investigate the NYPD. Parkhurst, who freely used his influence outside of his pulpit, insisted on the appointment of aggressive Irish-born attorney John Goff as chief counsel to the Lexow Committee.[15] In March 1894, the committee commenced highly publicized hearings held, appropriately, in the building known as the Tweed Courthouse in Manhattan.

Although the Lexow Committee first looked into Tammany-connected police misconduct relating to supervision of polling places and other election abuses, far greater attention and resources were devoted to the "second branch" inquiry of the day-to-day corruption in the NYPD. Nearly three thousand subpoenas and six hundred witnesses between March and December 1894 produced evidence of the payoffs needed to advance within the department and,

of greater concern to Parkhurst, the manner by which police facilitated locations that catered to the three vices of prostitution, gambling, and liquor.

The workings of the criminal justice system at the time accommodated Parkhurst's efforts. In his position as Parkhurst's investigator, Charles Gardner gave ideas for the sensational vice tour, dressed the straightlaced Parkhurst in disguise, provided necessary security, and accommodated Parkhurst's instructions of "I want to see worse" by showing him one unsavory location after another.[16] The crusade honed Parkhurst's political skills. He called New York County District Attorney DeLancey Nicoll "guileless" and "callow" in the February 1892 sermon,[17] and then he badly embarrassed Nicoll in the second grand jury appearance. Later, perhaps sensing that he would not be in office much longer, Nicoll referred individuals who complained about prostitution locations directly to Parkhurst's Society for the Prevention of Crime for further investigation. The society used its own aggressive investigative techniques. Undercover investigators from the society focused attention in particular precincts, obtained evidence of vice activities, and then appeared before selected judges to obtain search warrants, which were executed with reluctant assistance from the police.[18] Before Gardner delivered a signed warrant to the police for execution, he placed the society's own investigators at the search location to be sure that the police did not tip off the occupants. Gardner claimed that in just five months his efforts led the society to gather strong evidence in over five hundred cases of "disorderly house keepers, pool room runners, policy dealers, gambling house proprietors, liquor dealers, and other violators of decency." He claimed that the society's cases against the vice purveyors held up well in court while the smaller number of cases brought by the police resulted in a high percentage of dismissals due to intentionally insufficient evidence presented by the police—what Gardner derisively called "elastic testimony."[19]

Even while the Lexow Committee conducted its hearings in late 1894, Parkhurst pushed hard for indictments of police. While it is not possible to exactly reconstruct the roles of Parkhurst, the district attorney, the grand jurors, and other decision makers in the indictment process, Parkhurst's own version of events suggested that he wielded extraordinary influence. Indeed, Parkhurst cast himself or, at least his Society for the Prevention of Crime, as the driving force behind police indictments. For example, he described his "War on the Captains" and asserted that "*we* went before the Grand Jury and secured four indictments against Captain Devery."[20] Only weeks later, according to Parkhurst, "*we* undertook . . . to secure an indictment against Inspector Williams and Captain Schmittberger," and he complained about the charges being heard before a different grand jury.[21] Newspaper reporter Lincoln Steffens, reflecting in his autobiography from a perspective over three decades later, asserted that the effectiveness of Parkhurst's anti-vice crusade "led up to the whole period of muckraking and the development of the Progressive party."[22]

That the State Senate Republicans created the Lexow Committee in a mayoral election year was certainly no coincidence, and the committee's exposure of police corruption fueled anti-Tammany sentiment. The November 6, 1894, election gave an overwhelming victory to William Strong to become the first Republican mayor since the Civil War. Lexow Committee counsel John Goff became Strong's running mate, and he won election to the prestigious position of Recorder by even more votes than Strong received. Clarence Lexow, who was still preparing the committee's report, gave credit to the committee's work for the election results in his analysis in Joseph Pulitzer's *New York World*, a strongly anti-Tammany newspaper: "The boundless corruption exhibited in the testimony taken before the Senate committee opened the

eyes of the people to the peril confronting them from an extension of machine politics to densely populated municipalities."[23]

Sounding more than a bit haughty, Charles Parkhurst also gave his opinion about the election: "It shows that however apathetic men they may be, and however ignorant certain classes of men may be, there is a belief in the possibility of better things. Now having attained to these great results, and having dealt a blow to the agents of corruption in municipal government, we want not only to maintain this new position gained, but to go on to still stronger and larger attainments next year, and in the years to come."[24] Subsequent events would show that Parkhurst was too optimistic or, at least, he underestimated the voter turnout of the apathetic and the ignorant. The Democrats rode the Tammany tiger back into the mayor's office in the next election.

The Lexow Committee's report in January 1895 (signed only by its Republican members) praised Parkhurst's evidence gathering and found "an extraordinary disinclination on the part of the police, so efficient in other respects, to display any desire or activity in the suppression of certain descriptions of vice and crime."[25]

From a national perspective, the most significant response to the police corruption scandal was the appointment of Theodore Roosevelt as a police commissioner. Roosevelt had been elected to the New York State assembly and ran for mayor of New York in 1886, both before the age of thirty. He lost convincingly in the mayoral election, so he took a position with the United States Civil Service Commission in Washington for several years. William Strong's election as mayor gave Roosevelt his opportunity to return to New York. Strong appointed Roosevelt to the four-member board of police commissioners in May 1895, and the other three commissioners promptly voted Roosevelt to be their president.[26] Roosevelt used the position as a

showcase for his personality and ideas. He promoted anticorruption measures in hiring and promotion of police and other reforms, but he garnered the greatest attention for his efforts to enforce Sunday closing laws in saloons. New York voters did not react well to Roosevelt's efforts. The nonmayoral elections in November 1895 swung back toward Tammany. Interestingly, Roosevelt's national stature grew while his popularity in the city sank during his tenure as police commissioner.[27] Roosevelt stayed the course as police commissioner until the presidential election of William McKinley in 1896 gave him a proper exit from the tangle of city policing and politics. In the next years the ascent of his career was like a rocket launch—appointed as assistant secretary of the Navy in April 1897, charging up San Juan Hill with his Rough Riders in July 1898, election as governor of New York in November 1898, election as vice president under McKinley in November 1900, and rising to the presidency after McKinley's assassination in September 1901. His tenure as police commissioner might have launched his ascent, or it almost kept the rocket on the ground.

The Prosecutors

DeLancey Nicoll, the New York County district attorney when the scandal broke, seemed a man divided. Even before the turn of the twentieth century, Nicoll's pedigree added up to over two hundred years of prominence in New York. He was among the bluest of New York's blue bloods, with his ancestry tracing back to a colonial governor of New York and the earliest English settlers. A short profile of Nicoll in 1898 noted that he was educated at an elite New England prep school, followed by an ivy league college and law school, and emphasized that he belonged to "the best known social organizations in the city."[28]

Nicoll's route to becoming the district attorney showed how political realities might have overwhelmed his personal inclinations. District Attorney Randolph Martine, an anti-Tammany Democrat, appointed Nicoll as an assistant district attorney in 1885. His reputation grew with success in a major prosecution of New York City aldermen who accepted bribes. Then Nicoll himself ran for the office in 1887 as an Independent and Republican, but was defeated by John R. Fellows, the Tammany candidate. Nicoll was raised as a Democrat, "but he maintained his independence, breaking from Tammany when he saw fit."[29] He returned to the Tammany fold and was elected district attorney in 1890.[30]

In response to Parkhurst's scathing sermon on February 14, 1892, Nicoll seemed guided more by his Tammany allegiance than his anticorruption credentials. He immediately described the sermon as "the coarsest and most vindictive utterances from the pulpit" that he had ever heard and accused Parkhurst of spreading "falsehoods and misrepresentations."[31] Of course, regardless of his ivory tower upbringing, Nicoll must have known that at least some of Parkhurst's allegations were true. With extraordinary swiftness, Nicoll's demand that Parkhurst appear before the grand jury came just nine days after the sermon. One week later, the grand jury delivered its conclusion about Parkhurst's allegations: "We desire, further, to express our disapproval and condemnation of unfounded charges of this character, which, whatever may be the motive in uttering them, can only serve to create a feeling of unwarranted distrust in the minds of the community with regard to the integrity of public officials, and tends only to hinder the prompt administration of justice."[32] Nicoll appeared to have won a decisive victory that assisted Tammany's desire to avoid serious action against vice-related corruption in the city, leaving open the question of whether that was Nicoll's conscious objective. Chief investigator Gardner contended in his memoirs that Parkhurst believed Nicoll took the aggressive grand jury

action on orders from Tammany Hall.[33] For his part, Parkhurst simply vowed "that I would never again be caught in the presence of the enemy without powder and shot in my gun-barrel."[34]

The success from Nicoll's pro-Tammany efforts faded quickly. In just March 1892, the month following Parkhurst's scolding by the grand jury, the following occurred: Parkhurst and Gardner gathered evidence in their nighttime undercover vice tours, Parkhurst delivered another blistering sermon about vice and corruption at his church, and a different grand jury heard evidence about police actions in vice matters. That grand jury issued its presentment on March 31, 1892 and concluded that the police department failed in its duty to enforce vice laws and that the failure was due to "reasons and motives . . . which are illegal and corrupt."[35] In a telling headline, the *New York Times* trumpeted: "DR. PARKHURST PLEASED. THE GRAND JURY DID JUST WHAT HE WANTED IT TO DO." Although Parkhurst would later aggressively demand that individual police officers be criminally prosecuted, at this time he proclaimed that "my objective has not been to secure an indictment in these specific cases, but to secure, in the general mind of the public, an indictment of the entire Police Department."[36]

Out-maneuvered by Parkhurst and likely burned by his Tammany ties, Nicoll kept a relatively low profile. His term as district attorney expired at the end of 1893, just weeks before the New York Senate authorized the formation of the Lexow Committee. Only three police officers were indicted under his watch in the scandal-related prosecutions described below, and none of those cases was resolved while he was still in office. As a private attorney representing some police officials, he appeared before the Lexow Committee and complained, "You have summoned before you, upon your subpoenas, witnesses of various sorts and conditions; you have received the testimony of prostitutes, brothel keepers, perjurers, forgers, and self-confessed criminals and bribe-givers; you have listened to their evidence, giving them protection, eagerly

receiving their vengeful stories against members of the police department, high or low . . . and not only have you done that, but you have thrown aside the rules of evidence, and the ordinary safeguards which protect the citizen, private or public, and admitted hearsay rumor, and notoriety, as the basis of an attack upon the public officials."[37]

Nicoll's remarks went beyond the protests of a defense attorney on behalf of his clients—his own reputation based on his tenure as district attorney was at stake in the committee's hearings. Further, his remarks anticipated difficulties at criminal trials that Parkhurst and others might not have appreciated. The committee held hearings that included questionable witnesses giving testimony without full cross-examination and received other evidence that might not be admissible at a criminal trial, all of which would produce powerful headlines, public outrage, much-needed exposure of corruption, and a strong final report. But those successes were not necessarily transferable to criminal prosecutions. In any event, Nicoll later withdrew from any participation in the hearings. Even his nemesis Parkhurst wrote, "we were all sorry to bid him good-by,"[38]perhaps in deference to Nicoll's social standing, which was comparable to some of Parkhurst's prominent congregants and financial backers. Nicoll never again sought elective office.

Nicoll's predecessor John R. Fellows also became his successor, returning to be elected on the Tammany ticket as district attorney in late 1893 after serving in the United States Congress. Fellows had worked with Nicoll as an assistant district attorney on major corruption cases, but his personal background was starkly different from the privileged Nicoll's. Fellows grew up in upstate New York and then moved to Arkansas to study and practice law. At the onset of the Civil War, he joined the Confederate army, fought in key battles, and was held as a prisoner of war by the Union until the end of the conflict. He attended the 1868 Democratic Party

convention in New York as part of the Arkansas delegation and met Boss Tweed, who convinced him to move back to New York.[39] Fellows served as district attorney until his death in December 1896. He used the title of Colonel, his highest rank in the Confederate army, throughout his career in New York.

Parkhurst called the district attorney's office under Fellows "an obdurate obstacle and a biting exasperation" to efforts to bring charges against police.[40] In contrast, Fellows received lavish praise from the Lexow Committee in its report: "[F]rom the very inception of the investigation down to its close the district attorney acted in entire harmony with your committee, voluntarily placing at its disposal his own services and those of his assistants, together with the facilities and authority of his office, while the higher criminal courts aided in every proper way to facilitate our work."[41] After the committee finished its work, and Fellows was left with difficult decisions about prosecutions of police ensnared in the scandal, his record became less sterling. To criticize those difficult decisions as Monday-morning quarterbacking might seem unfair, especially when "Monday" comes more than a century later. But the record of scandal-related prosecutions as set forth below was so unfavorable that criticism is justified. Fellows seemed buffeted by trying to accommodate the Lexow Republicans while appeasing his Tammany sponsors and responding to the demands of Parkhurst and other reformers. The result was a combination of insufficient cases that should not have been prosecuted and meritorious cases that were pursued inadequately. Fellows complained about his situation when he felt compelled to move to dismiss thirty-five indictments against twelve police defendants (several defendants faced multiple indictments). At that point, in late December 1895, a few cases against police had gone to trial. Fellows asserted that "some of the trials had occupied seven or eight weeks each" so to proceed with the remaining cases "would have blocked the business of the

courts."[42] The governor offered to convene a special court to assist, but Fellows claimed that it was impossible to find a courtroom.[43] Mixed in with Fellows's excuses was likely the real reason for the dismissals: the evidence was weak, with many of the cases relying on the questionable testimony of brothel proprietor Augusta Thurow. The *New York Sun* went one step further and blamed former Lexow Committee counsel John Goff for his "rakings from the slums" that could not stand up in court and also blamed "the Parkhurst society and itinerant reformers, crooks, and stool pigeons" for gathering the "so-called" evidence that led to the indictment of the dismissed cases.[44] Parkhurst's exhortations and the Lexow Committee's recommendations must have weighed heavily in prosecutorial decision making. Nevertheless, Fellows was the district attorney at the time of indictment of all of the dismissed cases, so he bore more responsibility than anyone for the outcomes.

Overview of the Prosecutions

Information obtained regarding the prosecutions of the Lexow-era scandal yielded a total of forty-seven police officers from all ranks who were criminally charged.[45] Some of the officers were subject to more than one indictment, usually because the district attorney chose a route of multiple indictments due to separate criminal incidents or sometimes because officers were reindicted after dismissal of earlier charges. Table 3.1 shows that the ranks of the police charged were quite widely distributed.

TABLE 3.1. Ranks of police charged in Lexow-era prosecutions[46]

Rank	No. charged	% of total
Inspector	1	2
Captain	10	21
Detective (incl. wardman)	13	28
Sergeant	6	13
Patrolman (incl. roundsman)	17	36
Total	47	100

A wardman, also known as a "precinct detective," operated under a precinct command rather than the central detective squad. The position was particularly subject to corrupt activity, with the wardmen often collecting payoffs for the precinct captains.[47] In the middle of the Lexow Committee hearings in 1894, the board of police commissioners abolished the position of wardman.[48] A roundsman held a rank between sergeant and patrolman. Only one defendant in these prosecutions was clearly identified in reports as a roundsman, and he is counted above with the patrolmen. Not surprisingly, all of the defendants were men. Also not surprisingly, many appeared to be of Irish heritage, with twenty-six (55 percent) having surnames commonly associated with Irish heritage (Doherty, Donohue, Gannon, Meehan, O'Toole, etc.). At least three of the defendants (detectives Burns, Gannon, and Kelly) fled to Ireland in the midst of their legal troubles. It is certain that all of the defendants were white. Newspaper accounts did not state otherwise (such matters of race were often bluntly reported in press accounts at the time), and there were no blacks on the NYPD until a few years later (although a handful served earlier in the separate city of Brooklyn).[49]

For this study, examination of the press accounts and other sources of information about the prosecutions helped to determine the types of wrongdoing that were prosecuted. Where police were charged with multiple offenses or in multiple indictments, the primary charged criminal conduct was identified where possible. For a defendant charged with different types of criminal conduct in different indictments, the indictment that went to trial or otherwise became most prominent provided the primary charged criminal conduct. Also, conduct charged in a single indictment might include legally distinct offenses. For instance, Patrolman William Dwyer was convicted of assault and oppression (abuse of authority) in the arrest of a saloon keeper.[50] Based on the circumstances of the case, assault was selected as the primary charged conduct.

The wrongdoing by police charged in the criminal cases was largely in the nature of bribery and extortion, which are not separated for reasons explained in chapter 2. Table 3.2 shows the breakdown of the primary charged conducts.

TABLE 3.2. Primary charged conduct in Lexow-era prosecutions

Conduct	No. of cases	% of total
Bribery/extortion	38	81
Assault	9	19
Total	47	100

The illegal conduct by the police in these cases usually arose from some activity by civilians that can be called the "primary underlying activity." Since the primary charged conduct in the prosecutions involved payoffs to police (whether called bribery or extortion), those payoffs would be expected to have some basis in civilian activity, legal or otherwise. For summarizing

these police prosecutions, the civilians can be fairly described as victims, although a person engaged in illegal activity who made arrangements with corrupt police in order to be able to continue the illegal activity might not have fit traditional notions of a crime victim. In the most common situation, a person engaged in prostitution activity would give payoffs to police in order to be allowed to continue that activity. When police were charged with offenses arising from separate criminal incidents (such as taking payoffs from different parties), then available information was examined to determine either the most serious of the charged conduct or the charged conduct that was most prominently pursued in court. For instance, Captain William Devery was charged in separate indictments with taking bribes related to prostitution activity and bribes related to demolition of a building, and separate trials focused on the respective activities. The prostitution-related bribery case went to trial first, so that became the primary underlying activity for the breakdown below. The primary underlying activity (table 3.3) could be determined from press and other sources for almost all of the bribery/extortion cases, but available information for the assault cases was much more limited.

TABLE 3.3. Primary underlying civilian activity in Lexow-era prosecutions

Activity	No. of cases	Approx. %
Prostitution	14	30
Liquor	7	15
Construction	3	6
Concert hall	2	4
Steamship	2	4
Medical[51]	2	4
Sports event	1	2
Other business	4	9
No Information	12	26
Total	47	100

Of the twelve "no information" cases for underlying activity, the primary charged criminal conducts were assault (seven cases) and bribery/extortion (five cases). Since there were only nine assault cases in total, just two assault cases had the underlying activity reported in examined sources. Press accounts usually did not report the underlying activity in assault cases when reporting that an officer was indicted or a case was dismissed, and none of the seven "no information" assault cases went to trial. In addition, as will be described below, a higher proportion of the assault prosecutions had no known final dispositions compared to the bribery/extortion cases. The reasons for this apparently less thorough reporting on assault cases by the press are uncertain. Perhaps the description of an assault case against an individual cop (the assault cases tended to be lodged against patrolmen rather than higher-ranking officers) was not considered as newsworthy as the description of a bribery/extortion case that more often contained salacious details and ties to other prosecutions related to the same vice-involved victim.

The underlying activity in the prosecuted cases may have shown a shift away from the emphasis of the Parkhurst sermons and the Lexow Committee hearings. The sermons and the hearings emphasized police payoffs from the vices of prostitution, gambling, and liquor. Those vices certainly provided steady corrupt income to police— the same "pad" that the Knapp Commission would focus on almost eight decades later. Such an emphasis on the vices would be expected from the religious underpinnings of Parkhurst's work, while the politically inspired Lexow Committee hearings would exploit the publicity value of vice-based disclosures. Prostitution, as the underlying activity of 30 percent of the prosecuted cases, was consistent with that emphasis. After prostitution, however, emphasis on the vices seemed to drop off. Liquor is

significant (15 percent), but gambling is not on the list and the other underlying activity tended toward more legitimate, nonvice sources.

Prosecutorial decision making may have prompted the shift away from the underlying vice-based activities that Parkhurst and the Lexow Committee so strongly emphasized. A prosecution in criminal court needed witnesses who would show up and testify and, even better, would be believed by a jury. As will be noted in some manner repeatedly herein, vice-based police payoffs usually involved payments made by persons involved in illegal activity. To the prosecutor considering which cases to push into criminal court, prospective witnesses who had been criminals were generally seen as less credible, if they could be convinced to testify at all. Putting other case-specific factors aside, the prosecutor would likely consider the business person who was shaken down by police to be the more desirable prospective witness than the brothel operator who made payoffs to stay in business. That sort of decision making seems to be reflected in the breakdown of underlying activity in the reported prosecutions. Further, it appears that the district attorney tried to slow the grand jury's return of additional vice-based indictments of police. A hung jury in the criminal trial of Captain Michael Doherty and an adverse court decision in a departmental trial of another captain—both cases had relied on the testimony of prostitutes—caused the grand jury to hold back on filing police indictments that had already been voted because the cases lacked corroborative evidence that would make them stronger in criminal court.[52] District Attorney Fellows already had his hands full with weak cases.

The most striking conclusion about the Lexow-era prosecutions comes from examining the dispositions of the reported cases (table 3.4). The prosecutions were stunningly unsuccessful, taking the measure of success for a prosecution as a favorable outcome for the prosecutor. The basic favorable outcome for the prosecutor is a conviction, whether by guilty plea or trial

conviction. The basic unfavorable outcome for the prosecutor is a lack of a conviction, whether by dismissal or not guilty verdict or appellate reversal of a conviction. An additional measure of prosecutorial success could be the sentence imposed on a conviction, but the Lexow-era prosecutions had so few convictions that this additional measure is not helpful here.

TABLE 3.4. Dispositions of Lexow-era prosecutions

Disposition	Number	%
Convicted		
Guilty at trial	1	2
Guilty plea	1	2
Total	*2*	*4*
Not convicted		
Dismissed	30	64
Fugitive	2	4
Conviction reversed	2	
Not guilty at trial	2	
Total	*36*	*77*
Unknown dispositions	9	19
Total	47	100

To complete the picture of the only two convictions, Captain Edward Carpenter stopped his trial to plead guilty to receiving a $1000 bribe from an association of liquor retailers relating to the avoidance of Sunday closure laws. District Attorney Fellows personally recommended leniency in the form of a sentence of probation, but the judge refused to go along with the recommendation and sentenced Carpenter to three months in jail.[53] This case concluded in May

1896, by which time D.A. Fellows already had a large number of unsuccessful prosecutions in police cases, so his recommendation for leniency might have been a result of his eagerness to avoid another loss. In the other case that resulted in a conviction, Patrolman William Dwyer was found guilty by a trial jury of oppression (abuse of authority) in a peculiar scenario in which Dwyer falsely arrested a saloon keeper. The jury "united in a strong recommendation for mercy."[54] Under the state's first use of the oppression law, Dwyer received a sentence of two months in jail, and the conviction survived challenges on appeal.[55] For D.A. Fellows to recommend leniency in a midtrial guilty plea and for the Dwyer jury to recommend mercy seems consistent with the notion that members of the public (as reflected in the citizens on those juries) may have taken police corruption less seriously than Parkhurst and his followers, particularly as time passed after Parkhurst's sermons and Lexow's hearings. Indeed, Carr suggests that after the publication of the Lexow Committee's report, police corruption was "waiting until the public wearied of the passing fashion of reform and sank back into business as usual."[56]

Selected Prosecutions

By the time allegations of corrupt police activity are narrowed by screening by a prosecutor, fitting proofs into an indictment, and decisions by the judge and jury, the misconduct can appear quite minor. The prosecution of Captain Thomas Killilea showed the prosecutor's challenges in dealing with a de minimis violation.

The prosecutions related to payoffs from Augusta Thurow collectively provided the most prominent example of what can happen to cases that rely on a problematic witness. Prosecutions of police officers can put extraordinary pressure on a testifying witness, particularly if that

witness's illegal activity prompted the interaction with police. Prosecutors miscalculated her strength as a witness by relying on her to carry multiple cases through trials.

Captain Thomas Killilea

The organization of police corruption of the 1890s was hierarchical, with the routine vice-based payoffs flowing up to the captains after collection by the wardmen (precinct detectives). Parkhurst knew that attention to the captain-level corruption was critical to the moral aims of his crusade to reduce vice in the city. The Lexow Committee's report contended that corrupt activities "at work in the police department are such that operate from the higher officials down, rather than from the patrolmen up," and that "little corruption has been traced into the pockets of the ordinary policeman."[57] The focus on captains continued in the criminal prosecutions, as might have been expected as a result of Parkhurst prodding the district attorney to bring charges. Research obtained information about criminal prosecutions of a total ten captains, a very high number considering that there were only thirty-three captains in the department at the time, according to testimony before the Lexow Committee.[58] None of the cases with unknown dispositions involved captains, probably because the prosecution of a captain would have been subject to extensive press coverage. Table 3.5 shows the outcomes of the ten criminal cases involving captains.

TABLE 3.5. Outcomes of 10 Lexow-era prosecutions of captains

Outcome	No. of cases
Plea of guilty	1
Not guilty at trial	2
Dismissed—hung jury at trial	1
Dismissed—trial conviction reversed	1
Dismissed—died before trial	1
Dismissed—no trial	4

The unusual guilty plea of Captain Carpenter, noted above, was the only conviction of a captain. The most notorious case of a not guilty verdict at trial was the prosecution of Tammany-favored Captain William ("Big Bill") Devery, who not only received an acquittal in his criminal trial, but also had his dismissal from the police department reversed on appeal, after which he returned to become chief of the entire department after the consolidation of Greater New York in 1898. The other case of a not guilty verdict at trial was the prosecution of Captain Thomas Killilea.

In an example of how times have changed, the football game between Yale and Princeton was a major annual event in New York in the 1890s. The game drew huge crowds and was held on Thanksgiving Day, beginning the national tradition of football on that holiday. In 1892, the game drew an estimated sixty thousand fans to Manhattan Field, which was next door to the new Polo Grounds in upper Manhattan. The event was so grand that the *New York Sun* claimed that no other American city could match it "except when a President is inaugurated or a World's Fair is dedicated."[59] Captain Killilea supervised approximately one hundred police officers to provide security at the game.

Killilea came to New York from Ireland as a child, became a police officer in 1864, and at fifty-seven was one of the oldest members of the police department when he was indicted in April 1895. The indictment charged that he received a bribe of one hundred dollars relating to his services at the 1892 football game. Even at the indictment stage, the charge seemed minor: there was no underlying illegal activity that Killilea was protecting or overlooking. One reason for a prosecutor to bring a minor charge might be that the defendant engaged in more serious misconduct but only the minor charge was provable. The classic example of such a situation was the tax evasion case against Al Capone. While that scenario was possible in Killilea's case, it does not seem likely. The Lexow Committee only heard briefly about a single complaint from years earlier regarding Killilea and a disorderly house in the context of how the police board failed to take action against any police captains before feeling pressure from the committee.[60] When Killilea was indicted, the *New York Times* published a letter from the person who made that earlier complaint, but there were no other suggestions of wrongdoing by Killilea. When Parkhurst declared his "War on the Captains," Killilea was not on the target list.[61] As an entrenched captain in a thoroughly corrupt system, Killilea was probably not an honest cop. But he was not the Al Capone of police captains.

It would be difficult to overstate the misguided nature of the Killilea prosecution. Fellows had been the district attorney for over one year at the time of Killilea's indictment, so Fellows was not left burdened with a bad decision by the previous district attorney. Difficulties at trials of police were already apparent (the Doherty case is described below). Further, over one year passed between indictment and trial for Killilea, and Fellows ordered mass dismissals of police indictments during that time (also described below). Perhaps Fellows brought and continued the case against Killilea because the legitimate nature of the enterprise (a renowned college football

game) and the law-abiding nature of the bribe payers (sponsors of the game) made the case a refreshing change from so many of the other prosecutions of police.

The facts of the case against Killilea were quite simple. A representative of the athletic association that sponsored the football game wrote a check for one hundred dollars payable to Killilea, which Killilea cashed. The prosecution contended that the payment was a bribe to get Killilea to do the security job that he was supposed to do anyway. The defense claimed that the payment was for Killilea to buy lunch for officers working the game. The fact that the payment was by check made receipt of the payment easy to prove, but it also supported the defense position that Killilea was not trying to do anything illegal. Seeing its position weakening, the prosecution moved to dismiss bribery counts on the eve of trial and proceed only on a charge of unlawful receipt of a gratuity.[62] The trial lasted one day. The prosecution witnesses told how the payment was made and the check was cashed. For the defense, Killilea testified and explained that he actually spent a total of $109 for lunches for the working officers, and some of the officers testified that they had received money from Killilea to buy lunches.

The jury returned a verdict of not guilty in eight minutes. All of the jurors shook hands with Killilea.[63]

A few days later, a *New York Times* editorial mercilessly criticized the district attorney:

> Perhaps the most ridiculous and discreditable of all the efforts, real or pretended, to follow up the Lexow investigations is that which the District Attorney's office . . . has just made in the case of Capt. Killilea. . . . It was so conclusively shown that there was nothing in the case which it had taken the District Attorney's office three years and a half to prepare that it took the jury but eight minutes to acquit the prisoner.
>
> The circumstances point, like many other circumstances, to a most discreditable laxity and inefficiency in the District Attorney's office. . . . Inquiry would have shown what was brought out at the trial and would have shown that a prosecution would be alike futile and unjust.

> Of course, such a fiasco as this has an unfavorable effect upon more substantial cases.[64]

The Killilea case showed the weaknesses of using the criminal justice system to address very low-level wrongdoing by police. Valuable resources may be expended on prosecutions that juries will not take seriously. Perhaps worst of all—and pointed out in the *New York Times* editorial—more important cases may be adversely affected.

Mrs. Augusta Thurow

Augusta Thurow (always called "Mrs. Thurow" in transcripts and press accounts) operated a small brothel. She was a dressmaker who came into her other business gradually. Initially, she rented rooms to women who used the rooms as they saw fit. By the end, she was paying off many cops, pursuing politicians to help her stay in business, and frequently bailing out her girls. New York of the 1890s was infamous for its brothels, both grand and tawdry, which provided entertainment and catered to the particular preferences of customers. Mrs. Thurow's house seemed like a mom-and-pop store competing with major businesses. She was, in fact, helped by her German-speaking, often unemployed husband. The half dozen or so women who worked for Mrs. Thurow found customers on the street and brought them back to the rooms. Sometimes the women solicited from the stoop of the building on lower Second Avenue, but the police at times discouraged that.[65]

Her testimony before the Lexow Committee on June 4, 1894, was sensational. She originally came into contact with the Society for the Prevention of Crime (routinely called "Parkhurst's Society" at the hearings) when her "disorderly house" was raided and she faced charges based on the Society's complaint. Disgruntled by the lack of protection that her

protection payments to police seemed to be providing, she spoke with Parkhurst and then appeared by subpoena before the Lexow Committee. She implicated over a dozen police of ranks from patrolman to captain and described in straightforward terms how she put cash in their hands to keep her business going. On the same day as her testimony, evening newspapers blasted headlines about the disclosures.[66] One account said that she had given her testimony "frankly, fully and freely," and flatteringly observed, "She did not have bleached hair, like many of her class."[67] Senator Lexow seemed so at ease with the favorable evidence about the Thurow brothel that he volunteered his own translations of some of the testimony from Mrs. Thurow's husband when the witness lapsed into German. Although ex-D.A. Nicoll was permitted to conduct some cross-examination of Mrs. Thurow, her committee testimony was essentially unchallenged. The prostitution section of the Lexow Committee's final report focused on the value of Mrs. Thurow's "convincing" testimony and how it led to successful departmental charges before the board of police commissioners.[68] Her testimony also continued to be effective in grand jury appearances that resulted in numerous police indictments.

Mrs. Thurow's only trial testimony came in the case against Capt. Michael Doherty in February 1895. The previous June, Mrs. Thurow told the Lexow Committee that she made regular payoffs to Capt. Doherty's wardman, and once she paid Doherty directly.[69] Next came the turn for the police board to hear the same allegations in addition to evidence of the unexplained wealth that that Doherty and his wife had accumulated.[70] Doherty was dismissed from the police department and then indicted for bribery based on the same allegations.[71] The outlook was so negative for Doherty that even his attempt to buy a legitimate saloon in Brooklyn led to protests by ministers and hundreds of signatures on a petition in opposition.[72] There were, however, some indications that matters might turn more favorably for Doherty. Most

dramatically, Mrs. Thurow mysteriously vanished in November 1894 shortly before she would be needed in multiple court cases and amid rumors that she had been paid off to become unavailable to testify in the criminal trials.[73] In addition, Doherty's lawyer argued an appeal of his dismissal from the police force before a New York court.[74]

Mrs. Thurow, as it turned out, had fled to Europe, but she returned and was held in custody to assure that she would appear at Doherty's trial. Much of the prosecution's case was presented by D.A. Fellows personally, an indication that at that point he was not trying to distance himself from cases dependant on Mrs. Thurow. Her testimony seemed to proceed as expected with her description of the payoffs to Doherty and other police. In considering all of the police that she had to pay to keep her house operating, she commented that it was "very hard to find an honest man on that beat."[75] Other witnesses testified, including her husband, who appeared to provide reasonable corroboration for her testimony.

The defense case was extensive and aggressive. Numerous police witnesses with ranks from patrolman to inspector testified and refuted particular points of Mrs. Thurow's testimony, such as whether a particular meeting took place or the extent of police efforts to close Mrs. Thurow's house. Some of the police witnesses were under indictment themselves and may have had a particular incentive to undermine Mrs. Thurow's testimony. Defendant Doherty did not testify.[76] The jury deliberated for eighteen hours before the judge dismissed the jury on March 2, 1895, when it was deadlocked at nine to three in favor of acquittal.[77]

While the hung jury in the Doherty case was certainly detrimental to Mrs. Thurow's value as a prosecution witness, greater damage was done by a case that directly involved neither Doherty nor Thurow. Captain Adam Cross presided over the Fifth Street and Eldridge Street precincts, and the Lexow Committee heard testimony of his routinely receiving payoffs. Under

pressure after the Lexow disclosures, in late August 1894 the police board of commissioners (not yet with Roosevelt) took bold action. Captain Cross and others were fired from the police department following administrative trials.[78] However, Cross appealed to the General Term of the New York Supreme Court where the decision of the Police Board was reversed on March 15, 1895, and his reinstatement was ordered. As in the criminal case against Doherty, the testimony of brothel operators was critical in the administrative case against Cross. The *New York World* reported about the court decision, "The repudiation by the Court of the evidence given by crooks and the keepers of disorderly houses against the accused officers is regarded as the vital point in the decision."[79]

After the decision in the Cross case, which came less than two weeks after the hung jury in the Doherty case, D.A. Fellows decided not only to not retry Doherty case, but also to dismiss all pending indictments of police based on the testimony of Mrs. Thurow or other prostitution-related witnesses. The Cross decision was not binding on any of the criminal cases and did not require the drastic steps taken by the district attorney. Rather, it appeared that Fellows decided that prosecuting cases based on Thurow's testimony was simply not worth the effort. Her flight to Europe and the necessity of holding her in custody created problems, and the Doherty hung jury leaning toward acquittal suggested that trial convictions might never come in Mrs. Thurow's cases. Even if a jury were to convict, the Cross decision suggested that reviewing courts might not be inclined to let a conviction stand.

It would be reasonable to conclude that Mrs. Thurow was, indeed, a truthful witness. Her testimony before the Lexow Committee was strong and the police board decided to rely on it. Even at the Doherty trial, she seemed to provide effective testimony because the defense saw the need to mount an extensive case to counter it. Within the dynamics of the Doherty trial was the

heart of the prosecutor's dilemma in bringing a criminal case with a witness like Mrs. Thurow. The witness could be entirely truthful, but the testimony still might not meet the prosecutor's burden of proof for a criminal case in light of a lack of strong corroborative evidence, the aggressive defense often presented in police cases, and jury indifference about the underlying conduct (here, prostitution) of the offense. As he handled the Doherty case personally, D.A. Fellows fully understood that his office was saddled with more than a dozen police defendants in similar cases that would be difficult to win at trial and challenging to defend on appeal. One of Fellows's prosecutors told that court that the Cross decision had "wiped out the chance for conviction of any of the indicted police officials on evidence of like general character."[80] Using the Cross decision as the reason, or perhaps simply as the excuse that he needed, Fellows moved for dismissal of all of the cases.[81]

Prosecutors have to deal with witness problems: a witness may die, or fail to appear, or recant testimony. Mrs. Thurow certainly presented problems, but the bigger issues arose in how cases based on her testimony were mishandled by prosecutors. Likely responding to political and other pressures, prosecutors brought too many cases that relied on Mrs. Thurow's testimony. Then, in her single trial appearance, prosecutors appeared not to appreciate the extent to which her testimony needed corroboration to overcome both her weaknesses as a witness and the reluctance of juries to convict in such cases. Finally, although the problems with Mrs. Thurow's cases had become apparent and grew with potential appellate issues, the district attorney may have acted in too much haste in dropping all of the Thurow-related cases.

Conclusions

The May 1896 *New York Times* editorial quoted above about the prosecution of Killilea also spoke generally about criminal trials of police in the Lexow era scandal: "There could not be a more lame and impotent conclusion to the sensational investigation of the police years ago than has been furnished by the trials of policemen in consequence of that investigation. The only Police Captain who has been convicted of blackmail by a jury is now out on bail, having secured a new trial, and now the only one in confinement has been sentenced on his own plea of guilty."[82] This commentary about a "lame and impotent conclusion" came near the end of the dispositions of the cases against police who were criminally prosecuted. Only a handful of cases remained, and those were eventually dismissed like almost all of the others.

The Lexow-era scandal anticipated circumstances that arose in later scandals. Problematic civilian witnesses like Mrs. Thurow became common in police prosecutions, such as gambler Harry Gross of the 1950s who also took flight and had to be placed under arrest. Teddy Roosevelt most dramatically showed how addressing police corruption can attract public attention, and the later scandals often made or broke political careers. Election results moved with the ebbs and flows of the 1890s scandal, as did future city elections in later scandals. Later prosecutors certainly saw failures in cases against cops, but the utter lack of prosecutorial success in the 1890s may have signaled to future prosecutors that cases needed to be screened more carefully.

In other ways, later scandals differed from the Lexow era. Subsequent scandals would not include prosecutions of such a high percentage of defendants holding ranks above patrolman. Private investigations of the scale like those conducted by the Society for the Prevention of Crime would not occur again, although journalists carried on some of that function. That a private citizen like Rev. Parkhurst would never again hold such influence over the mechanisms

of investigating and charging cops was a positive development. But a lack of outside oversight and indications that the NYPD avoided policing itself would fuel later debates over civilian review boards and special prosecutors.

Notes

[1] Parkhurst, Our Fight with Tammany, 10.

[2] James Trager, *The New York Chronology* (New York: Harper Collins, 2003), 212–230.

[3] U.S. Census Bureau, "Population of the 100 Largest Urban Places: 1890," http://www.census.gov/population/www/documentation/twps0027/tab12.txt.

[4] New York City Department of City Planning, "Total and Foreign-born Population New York City, 1790–2000," http://www.nyc.gov/html/dcp/pdf/census/1790-2000_nyc_total_foreign_birth.pdf (accessed June 24, 2013).

[5] Burrows and Wallace, *Gotham*, 1008.

[6] Zacks, *Island of Vice*, 2.

[7] Jacob A. Riis, *How the Other Half Lives* (1890; repr., New York: Penguin, 1997), 21.

[8] Caleb Carr, *The Alienist* (New York: Random House, 1994), 394. Burrows and Wallace take note of the Salvation Army, the Charitable Organization Society, the Children's Aid Society, the Committee for the Suppression of Legalized Vice, the Society for the Suppression of Vice, the Society for the Prevention of Crime, and the City Vigilance League in what they call a "Purity Crusade." *Gotham,* 1155–1169.

[9] Burrows and Wallace, *Gotham*, 1156.

[10] Parkhurst, Our Fight with Tammany, 13–14.

[11] Gardner, The Doctor and the Devil, 14.

[12] Parkhurst, Our Fight with Tammany, 74.

[13] Edward Ross Ellis, *The Epic of New York City* (New York: Kodansha America, 1966), 423–424; Kenneth Fox, *Better City Government: Innovation in American Urban Politics, 1850–1937* (Philadelphia: Temple University Press, 1977), 44.

[14] James F. Richardson, "Corruption in the New York Police, 1870–1900, in *Police Corruption*, ed. Sherman, 47–60. Platt later left Parkhurst's congregation as a rift grew

between them, with Parkhurst believing that Platt ended corruption hearings too soon. Lardner and Reppetto, *NYPD: A City and Its Police*, 105.

[15] Ellis, Epic of New York City, 430.

[16] Gardner, The Doctor and the Devil, 17–24.

[17] Parkhurst, *Our Fight with Tammany*, 15, 21.

[18] Zacks, *Island of Vice*, 28–29.

[19] Gardner, The Doctor and the Devil, 78–80.

[20] Parkhurst, *Our Fight with Tammany*, 214, emphasis added.

[21] Ibid., 217–218, emphasis added.

[22] Lincoln Steffens, *The Autobiography of Lincoln Steffens* (New York: Harcourt, Brace and World, 1931), 215.

[23] "Tammany's Moving: What They Think of It," *New York World*, November 7, 1894.

[24] Ibid.

[25] Lexow Committee Report, 1, 21.

[26] Zacks, *Island of Vice*, 68–70. The position of president of the board of commissioners was largely a titular position with no more voting authority than the other members.

[27] Edmund Morris, *The Rise of Theodore Roosevelt* (New York: Modern Library, 2001), 523.

[28] Jay Henry Mowbray, *Representative Men of New York* (New York: New York Press, 1898), 131.

[29] "De Lancey Nicoll, Noted Lawyer, Dies," *New York Times*, April 1, 1931.

[30] At the time, the district attorney was elected for a three-year term. Nicoll was elected in 1890 and took office January 1, 1891.

[31] "Mr. Nicoll and Dr. Parkhurst: The District Attorney's Reply to the Minister's Criticism," *New York Times*, February 16, 1892.

[32] "Dr. Parkhurst is Rebuked," *New York Times*, March 2, 1892. The grand jury's presentation was made to judge Randolph Martine, who previously had been the district attorney under whom Nicoll had such success with corruption prosecutions.

[33] Gardner, The Doctor and the Devil, 15.

[34] Parkhurst, Our Fight with Tammany, 40.

[35] "Illegal and Bad Motives: Why the Police Do Not Suppress Vice and Crime," *New York Times*, April 2, 1892.

[36] "Dr. Parkhurst Pleased: The Grand Jury Did Just What He Wanted It to Do," *New York Times*, April 2, 1892.

[37] Lexow Committee Report, 3, 2471.

[38] Parkhurst, Our Fight with Tammany, 250.

[39] "Col. John R. Fellows Dead," *New York Times*, December 8, 1896.

[40] Parkhurst, Our Fight with Tammany, 218.

[41] Lexow Committee Report, 1, 5.

[42] "Police Cases Dismissed," *New York Times*, December 27, 1895.

[43] Ibid.

[44] "Lexow Cases Wiped Out," *New York Sun*, December 27, 1895.

[45] John Sheehan, a commissioner of the police department, was charged with contempt for failure to turn over records to the Lexow Committee. "It May Imprison Sheehan," *New York Times*, December 24, 1894. The job of police commissioner (as Theodore Roosevelt held) was a politically appointed civilian position so it is not counted among the criminal prosecutions of police here.

[46] All data used to compile tables in this dissertation are available from the author. Sources were those described in the *Data Collection and Research* section of Chapter 2.

[47] Lardner and Reppetto, *NYPD: A City and Its Police*, 85–86.

[48] "It May Imprison Stephenson—Commissioners Abolish the Position of Ward Man," *New York Times*, September 7, 1894.

[49] Sam Roberts, "Recalling First Black Appointed to New York City Police Department," *New York Times*, June 26, 2011.

[50] People v. William Dwyer, 63 N.Y.S. 495 (County Court 1900).

[51] Sgt. William O'Toole and Det. William Frink allegedly took bribes from Dr. J. N. Whitehead, who had been arrested for malpractice. "Trial of Frink and O'Toole," *New York Evening World*, April 10, 1895. "Malpractice" was sometimes a euphemism for performing abortions. Press

accounts did not suggest whether the malpractice might have been related to prostitution activity. The charges were dismissed on the eve of trial based on the prosecution's belief that the doctor and other witnesses would have committed perjury. "For Lack of Credible Evidence," *New York Tribune*, May 12, 1895.

[52] "Delay Due to Caution: Grand Jury Desired More Corroborative Testimony," *New York Times*, March 27, 1895.

[53] "Carpenter's Disgrace," *New York Tribune*, May 13, 1896.

[54] "Policeman Dwyer Guilty," *New York Sun*, March 22, 1894.

[55] "A Dreyfuss Case at Home: Policeman Convicted by Perjury Asks for Justice," *New York Times*, September 9, 1899.

[56] Carr, The Alienist,19.

[57] Lexow Committee Report, 1, 29.

[58] Ibid., 1, 729.

[59] "It Was Yale's Game," *New York Sun*, November 25, 1892.

[60] Lexow Committee Report, vol 1, 734; vol. 3, 2836.

[61] Parkhurst, *Our Fight with Tammany*, 214–230.

[62] "Captain Killilea's Trial," *New York Tribune*, May 14, 1896.

[63] "Acquittal for Killilea," *New York Times*, May 16, 1896.

[64] "The Killilea Fiasco," *New York Times*, May 17, 1896.

[65] Testimony of Augusta Thurow and Ernest Thurow on June 4, 1894, Lexow Committee Report, 1, 1040–1122.

[66] "Capt. Doherty is Accused: Mrs. Thurow Swears to Having His Various Sums for Protection," *New York World*, June 4, 1894.

[67] "Money Paid to Captains," *New York Tribune*, June 5, 1894.

[68] Lexow Committee Report, 1, 82–83.

[69] Ibid., 1, 1096.

[70] Sloat, Battle for the Soul, 324.

[71] "New Indictments Found," *New York Times*, December 5, 1894.

[72] "Does Doherty Want a Saloon," *New York Times*, November 26, 1894.

[73] "Mrs. Thurow is Missing," *New York Times*, November 29, 1894.

[74] "Ex-Capt. Doherty's Case on Trial," *New York Tribune*, December 11, 1894.

[75] "Mrs. Thurow a Witness," *New York Times*, February 27, 1895.

[76] "Testifying for Doherty," *New York Times*, February 28, 1895.

[77] "Doherty Jury Disagrees," *New York World*, March 2, 1895.

[78] "Cross and Devery Fired," *New York Sun*, September 1, 1894.

[79] "More May Get Back," *New York World*, March 16, 1895.

[80] "Policemen Not Punished," *New York Times*, January 10, 1896.

[81] "Police Indictments Dismissed," *New York Times*, October 30, 1895; "Police Cases Dismissed," *New York Times*, December 27, 1895.

[82] "Acquittal for Killilea," *New York Times*, May 16, 1896. The captain who secured the new trial was William Devery, and the captain who pleaded guilty was William Carpenter.

Chapter 4

The Curran Committee–Era Scandal

> There is nothing wrong with the police department except public clamor.
> —Police Commissioner Rhinelander Waldo, September 20, 1912[1]

Coincident with the passing of one scandal and setting the stage for the next, the Madison Square Presbyterian Church where Rev. Parkhurst preached against police corruption was demolished in 1909 and replaced by the tallest building in the world.[2] The 1898 consolidation of Brooklyn into Greater New York gave New York a population of more than 3.4 million, twice the population of second city Chicago in the 1900 United States Census. By 1910, immigration-fueled population growth had given New York another million residents.[3] Despite the expansion of city borders, residents became even more centralized in Manhattan, where the 1910 population hit an all-time high of 2.4 million, compared to only 1.6 million today.[4] The waves of newcomers from Ireland and Germany in the nineteenth century had subsided, replaced mainly by Catholic immigrants from Italy and largely Jewish immigrants from Eastern Europe and Russia.[5] Most of the young women killed in the horrific Triangle Shirtwaist fire in 1911 were Italian or Jewish. When the city opened its first major subway line in 1904, stations that were not identified by numbered streets had pictorial mosaics designed to aid riders who could not read English.[6]

Whatever ethnic or religious prejudices might have been involved, many New Yorkers thought the new immigrant populations caused particular crime problems by adding more ethnic

gangs to the city's mix. The Italian gangsters of the Black Hand largely preyed on their own community (even opera star Enrico Caruso paid for protection), and the group provided a model for later organized crime syndicates in the United States.[7] One of the NYPD's most honored detectives, Joseph Petrosino, was assassinated in 1910 when he investigated the Black Hand in Sicily. As for the perception of a Jewish crime problem, the city's police commissioner wrote an article in 1908 asserting that Jews committed half of the city's crime, although he later explained that he had been provided with faulty statistics.[8] Faulty statistics or not, the commissioner's over-the-top assertion likely had considerable public sentiment behind it. The Jewish-dominated Eastman Gang protected brothels and gambling houses while forging close ties with Tammany Hall politicians.[9] Prominent members of the Eastman Gang would be central players in the Herman Rosenthal murder that was the triggering event of the new police scandal in 1912. Mayor William Gaynor reflected public concerns about New York's immigrants when he wrote an open letter to the police commissioner soon after the murder: "We have in this city the largest foreign population of any city, and a large number of them are degenerates and criminals. The gambling of the city is almost all in their hands, not to mention other vices and crimes. The published names of everyone connected nearly or remotely with Rosenthal and his murder show them to be of this same class of lawless foreigners to which he belonged."[10] The "published names" to which the mayor referred were mostly Jewish, with at least one Italian.

The social and political influence of the Progressive Era affected the city. Theodore Roosevelt managed to rise from the morass of policing matters in New York to the governorship and presidency and to form the Progressive Party. Although New York did not participate as much as some other cities in the so-called city beautiful movement, public buildings such as Pennsylvania Station (1910), the New York Public Library (1911), and Grand Central Terminal

(rebuilt 1904–1913) provided the grand public spaces promoted by the movement. Progressive legislation important for the city came in the state's Tenement House Act of 1901 with requirements for ventilation, plumbing, and fire safety for apartment building construction.

In politics, Tammany Hall's dominance seemed to weaken. Enjoying the backlash against extremes of Parkhurst's moral crusade and Roosevelt's Sunday saloon closings, Tammany won the first mayoral election for Greater New York in 1897 with Robert Van Wyck. Asa Bird Gardiner, the chairman of the Tammany Hall Legal Committee, deserved credit for plain talking when he made famous the slogan "To Hell with Reform" as he ran for New York County district attorney on Van Wyck's ticket. Bird won, although he was removed from office three years later by Governor Roosevelt for giving favored treatment to the (yet again) indicted police chief "Big Bill" Devery.[11] Devery avoided conviction, finally lost his job with the police department, continued to amass wealth, and became the co-owner of a professional baseball team when he moved a team from Baltimore to New York in 1903. That team became the New York Yankees.[12]

The whims of voters swung back again in 1901 with the election of Columbia University president Seth Low as mayor on a Republican fusion ticket that included William Travers Jerome as district attorney for New York County. Jerome had served as one of the attorneys for the Lexow Committee, and as district attorney he would pioneer the creation of a modern and professional prosecutor's office.[13] Low only served one term before Democrats returned for nearly a decade, but even Democrats George McClellan, Jr. (1904–1909) and William Gaynor (1910–1913) operated with considerable independence from Tammany Hall.[14]

The Triggering Event

Of all of the cyclical police scandals, the triggering event for the scandal that broke in 1912 was the most distinct. The appointed investigative commission even acknowledged the murder of gambler Herman Rosenthal in the opening paragraph of its final report.[15] Describing the effect of the event on the city, the chairman of the commission later wrote that "the town boiled over."[16]

The four-member board of police commissioners, such as the one on which Theodore Roosevelt served, had been replaced in 1901 by the position of a single police commissioner. In 1911, commissioner Rhinelander Waldo decided to create three new squads run out of headquarters that would handle vice enforcement. He appointed Lt. Charles Becker to head one of the squads, which became commonly called the "strong-arm squad." Becker had already been involved in two police matters that received public attention. In 1896, author Stephen Crane testified against Becker in a hearing before the police commissioners about alleged false statements by Becker in the arrest of a street prostitute. The commissioners declined to convict Becker. In 1906, Becker conducted a series of raids intended to support departmental charges that Inspector Max Schmittberger had been derelict in his duty to enforce laws.[17] Schmittberger became a target for many in the department after he had criminal charges against him dismissed by the district attorney because of his cooperation and testimony before the Lexow Committee. Schmittberger was cleared of the departmental charges and, remarkably, became chief inspector of the NYPD in 1909.[18]

Becker soon took advantage of his new position heading the strong-arm squad to upgrade his wardrobe, hobnob with Broadway celebrities like Bat Masterson, and garner press coverage for his squad's apparent enforcement actions, all while taking huge payoffs from gambling establishments. One of his corrupt relationships was with gambling operator Herman Rosenthal.

Although Henry Curran, chairman of the soon-to-be-formed investigative commission, later called Rosenthal the "greatest gambling house man of them all,"[19] Lardner and Reppetto described him as "one of the second tier members of the Lower East Side gambling fraternity."[20] Whatever his status as a gambler, Rosenthal funneled substantial money to Becker. Difficulties arose because Rosenthal was not a tolerant participant in the game in which police conducted showy raids to appear that they were enforcing the law while the gamblers were shortly permitted to reopen or operate elsewhere.

A disgruntled Rosenthal very publicly complained about Becker by providing a detailed statement to the *Evening World* newspaper that was published on July 14, 1912.[21] Perhaps even more surprising, Manhattan D.A. Charles Whitman announced on July 15 that he had already met with Rosenthal and had "decided to give him an opportunity to repeat his story before the Grand Jury."[22] Later that same day, Rosenthal bought several copies of the *Evening World* and had drinks at the Metropole Hotel on West 43rd Street. When he left the hotel at about two o'clock in the morning with his newspapers in hand, he was shot dead on the sidewalk by several gunmen who escaped in a getaway car.[23]

The license plate of the getaway car quickly led to arrests of the alleged shooters, and their confessions identified the two men who hired them. Those two men, in turn, identified Lt. Becker as having arranged the killing. Becker was arrested just two weeks after the murder.[24] New Yorkers soon became familiar with thugs known as Gyp the Blood, Lefty Louie, and Dago Frank. In fairness to Mayor Gaynor and his offensive remarks about the foreign population of the city, most of the persons involved with the murder were, indeed, born outside of the United States.

The Response

At a special session on August 5, 1912, the board of aldermen (forerunner of the city council) appointed a nine-member committee from its ranks to investigate the police department. The *Evening World*'s front page headline declared, "Aldermen Name Lexowers."[25] The *New York Times* promptly anticipated "a complete Lexowing" of the police department.[26] The newspapers essentially advised readers that the new committee would serve the same function as the Lexow Committee in the earlier corruption scandal—a sort of here-we-go-again warning for New Yorkers.

The committee became known as the Curran Committee after its chairman, Alderman Henry Curran.[27] Although their missions and procedures were quite similar, the Lexow Committee was created by the state legislature while city officials formed the Curran Committee. In addition, the Curran Committee seemed less a creature of partisan politics than the Republican-favored Lexow Committee. The Curran Committee membership did lean Republican by 6 to 3, but the board of aldermen voted unanimously to create the committee with the support of even the Tammany Democrats.[28] Initially, the most significant overt political opposition came from Mayor Gaynor, and he was rewarded by being called as the first witness before the committee. By the time the hearings were finished and the committee's highly critical report was ready to be issued, the Tammany Democrats voted against the report, and the whole board of aldermen also declined to support it.[29]

Chairman Curran attempted to guide the committee to focus on administrative deficiencies in the police department and avoid "excitement" because, according to Curran's memoirs, "There was plenty of that up in the criminal courts building."[30] The interplay between committee and prosecutor for the Curran Committee was quite different than it was for the

Lexow Committee. The Lexow Committee (aided by the relentless Rev. Parkhurst) made headline-grabbing disclosures that prodded reluctant district attorneys to bring criminal charges. The resulting criminal cases, as described in chapter 3, were extremely unsuccessful. In contrast, criminal prosecutions by an eager district attorney for the Rosenthal murder gave support to the creation of the Curran Committee. Some of this contrast, of course, was driven by the nature of the respective triggering events. The Lexow-era triggering event (Parkhurst's sermon) was a call for reluctant or dishonest authorities to take action. The Curran-era triggering event (Rosenthal's murder) demanded a vigorous investigative response that quickly led to the prosecution of Lt. Becker. Curran acknowledged that the police involvement in the murder, along with a lack of action by the mayor, caused him to look for an obscure section of the city charter that allowed oversight by the aldermen in matters of enforcement of laws, thereby giving some legal authority for the formation of the committee.[31]

The committee conducted eighty public hearings that examined more than two hundred witnesses at City Hall from September 1912 through March 1913. With the prosecution of Lt. Becker drawing more attention than any police case in New York history, Curran was correct that the initial excitement was in the criminal courts. After brothel operators Mary Goode and George Sipp appeared before the committee, though, the combination of sex and corruption brought more excitement to the committee's work.

The final report of the Curran Committee was the most thoughtful, thorough, and practical of the scandal-related investigative reports until, perhaps, the Knapp Commission report in 1972. Issued on June 10, 1913, less than one year after the triggering event of the Rosenthal murder, the report methodically set forth descriptions of administrative deficiencies in the police department (for example, captains received some complaints directly from civilians and pursued,

ignored, or even destroyed the complaints solely as they desired) and made recommendations (for example, to establish uniform procedures for handling civilian complaints).[32] In the corruption area, the report contended that the hearings had disclosed "only a small fraction of the corruption existing in the department." More specifically, gambling and prostitution were "fertile sources of graft" resulting in the corruption of a "large percentage" of police dealing with those areas.[33] The report described a common practice called a "turn out" in which police made a "friendly collar" (arrest) and then intentionally provided insufficient testimony in court in order to cause a dismissal of the charges. The police received a cash payoff, superior officers could point to the apparent effort to enforce laws as shown by the arrest, and the offender was not convicted.[34] The report urged changes to streamline departmental procedures to discipline or dismiss delinquent officers and criticized the loose practice by which the police commissioner reinstated previously dismissed officers. The report's harshest words were directed at police commissioner Waldo. After listing point-by-point criticisms, including Waldo's failure to control wrongdoing by officers, his weakness in disciplining subordinates, and his lack of control over police pensions, the report concluded, "Public interest requires the immediate removal of Commissioner Waldo."[35]

Concerning criminal prosecutions, the committee's report indicated that there was a much tighter connection between the work of the committee and the work of the district attorney than had been present in the Lexow era. The report noted that D.A. Charles Whitman's assignment of an assistant to aid the committee "facilitated prompt prosecution and conviction of police officials accused before us."[36] The district attorneys of the Lexow era were pushed more by Rev. Parkhurst toward indicting police than by the Lexow Committee. After the Rosenthal murder, on the other hand, D.A. Whitman proceeded quickly with the Becker indictment even before the

Curran Committee was created. By the time the committee filed its report, Becker already had been tried, convicted, and sentenced to be executed. The report described Becker's situation and also noted the prosecutions of fourteen other police "as a result of the prompt action taken by the District Attorney after the exposures made before us."[37] Many of those cases, the report noted, were awaiting trial and some had resulted in convictions.

In politics, the Rosenthal murder and the ensuing police scandal carried ramifications. Mayor Gaynor's national political profile was enhanced by a dramatic photograph taken at the moment he was struck by a bullet in a 1910 assassination attempt, but then his prospects dimmed with the revelations of corruption in his police department. Although the Curran Committee was not as politically motivated as the Lexow Committee, the June 1913 final committee report came out in a mayoral election year and influenced the election. Gaynor wanted to run for reelection as mayor, but damage to his reputation by the police scandal and lingering strained relations with Tammany Hall caused Tammany Democrats to nominate a loyalist named Edward McCall. Gaynor prepared to run anyway as the candidate of a reform coalition until he died suddenly on a preelection cruise to Europe. The cause of death was a kidney ailment that might have been aggravated by the bullet still lodged in his neck from the 1910 assassination attempt.[38]

After the savage criticism of the Curran Committee's report and without Mayor Gaynor to support him, police commissioner Rhinelander Waldo submitted his resignation to the acting mayor, Ardolph Kline.[39] In a "you-can't-quit—you're-fired" sort of scenario, Kline dismissed Waldo for insubordination.[40] In the meantime, the mayoral election was won with surprising ease by William Purroy Mitchel as a fusion reform candidate. So, just as happened in the 1890s, the police scandal was a major factor in a mayoral election that defeated Tammany Hall. Mitchel, known as the Boy Mayor after he took office at an especially youthful looking age thirty-four,

moved aggressively in reforms of the police department.[41] But, as happened with Mayor Strong after his post-Lexow victory in 1894, Mitchel would serve only one term, and Tammany Hall took back the mayor's office in the next election. Among the political effects from the prosecutorial side of the police scandal, the most dramatic was District Attorney Charles Whitman riding his record of success to election as New York State governor in 1914. Referring to Whitman, future Supreme Court justice Felix Frankfurter called a "politically minded" district attorney "one of the great curses of America."[42] Curse or not, Whitman's political moves up the ladder placed him in the extraordinary position of being both the prosecutor who brought the case against Lt. Becker and the governor who signed Becker's death warrant.

The Prosecutors

Although he prosecuted none of the cases against police officers in the Curran-era scandal, William Travers Jerome participated in the Lexow investigation, brought enforcement actions that were central to issues about police corruption, and professionalized the district attorney's office. Perhaps most importantly, if less tangibly, he promoted the process that encouraged more separation between the district attorneys and the tawdrier aspects of urban machine politics. This was of particular importance when much police corruption was still interwoven with corruption of the larger political picture.

Jerome grew up in Manhattan. His cousin from Brooklyn, Jennie Jerome, would become Lady Randolph Churchill and give birth to Winston Churchill. After education that included the same New England boarding school that Rev. Parkhurst attended, Amherst College, and Columbia Law School, Jerome became an assistant district attorney in D.A. John Fellows's first term in the late 1880s. Jerome left prosecutorial work for private practice when DeLancey Nicoll

became D.A., then returned to the public sector when asked by John Goff to join the legal team of the Lexow Committee. Before the election of 1895, the state legislature created the Court of General Sessions, a judicial body that could exercise unusual investigative powers. Mayor Strong, elected on the anti-Tammany ticket in 1895, appointed Jerome to that court. Jerome used his position to conduct highly publicized raids on gambling and other vice locations, continuing those actions even through the return of Tammany candidates as mayor and district attorney. When the city swung back to electing an anti-Tammany mayor in 1901, Jerome was elected district attorney for New York County. He hired well-qualified attorneys to work as prosecutors and continued aggressive actions against vice locations, including the seizure of furniture and gambling devices to discourage the reopening of locations.[43]

An important aspect of Jerome's tenure was shown when he ran for reelection as district attorney in 1905, and he won quite easily as an independent despite broad Tammany victories in the election.[44] Voters appeared to want the delivery of city services and, generally, the protection of the interests of common New Yorkers that Tammany promised, but they also wanted an anti-Tammany district attorney to fight crime and corruption. The district attorney who could succeed politically (that is, get elected) without the political machine might be less beholden to it. Jerome, who lived modestly on the Lower East Side when he was district attorney, retired from politics after that second term. In the 1920s, he gained great personal wealth through investing in and becoming chairman of the company that provided the Technicolor film process to Hollywood studios after sound came to movies.[45]

Jerome's successor, Charles S. Whitman, would continue Jerome's standard in seeking a professional, aggressive district attorney's office, and Whitman himself would become a modern model for a politically ambitious prosecutor. He was a preacher's son from Connecticut,

educated at Amherst (like Jerome), and he moved to New York to attend law school at New York University. As an attorney, he gained a reputation for honesty and service to the underprivileged, which caught the attention of anti-Tammany mayor Seth Low. Mayor Low first appointed Whitman to the city's legal department and subsequently, just before Low left office, as a magistrate. Whitman remained in the judiciary for several years and took note of the corruption and other abuses that appeared to take place. In 1909, Whitman ran as a Republican and anti-Tammany candidate for New York County district attorney. In a statement about government waste and corruption on the eve of the election, Whitman cautioned voters, "A Tammany District Attorney, however honest he may be, cannot be expected to improve the situation."[46] Similar to Jerome's accomplishment a few years earlier, Whitman won by a wide margin despite an easy victory by the Tammany candidate for mayor, again bolstering the notion of voters wanting separation between the functions of the prosecutor and the workings of the political machine.[47]

Whitman moved quickly after the Rosenthal homicide. He raced to the murder scene in the middle of the night, purportedly urged to do so by his friend Herbert Swope of the *Evening World* newspaper. He arranged for businessmen to assist in funding the investigation and for the use of private investigators to build the case against Becker under the reasonable belief that the police department could not be trusted to conduct a fair and thorough investigation.[48] The case against Becker came to trial with extraordinary speed in October 1912, less than three months after the Rosenthal murder. The trial judge was John Goff, previously shown to be a staunch opponent of police corruption in his capacity as lead counsel to the Lexow Committee. Whitman drew extensive press coverage by personally conducting the trial for the district attorney's office.

The jury convicted Becker after deliberations of less than eight hours, he was sentenced to be executed, and the case moved on to the appellate courts for review.[49]

After the Becker conviction, Whitman quickly turned his attention to prosecutions based on disclosures before the ongoing Curran Committee hearings.[50] Most of the scandal-related cases brought to indictment by the district attorney's office were indicted in the four month period when the Becker case was on appeal and the committee continued hearings. While this may indicate swiftness and focus by Whitman's office, it may also suggest a disinclination to look for more corrupt activity than what was already disclosed by the Curran Committee.

The New York State Court of Appeals reversed Becker's conviction on February 24, 1914, and ordered a new trial.[51] The court's opinion spoke critically of Whitman's case for relying so heavily on testimony from criminals, some of whom had received immunity, but the grounds for reversal centered on particular rulings made by Justice Goff at trial that favored the prosecution. The retrial of the case was assigned to Justice Samuel Seabury. Just as Justice Goff was a prominent figure from the earlier scandal era who returned in a different role in the subsequent scandal, Justice Seabury would return (and even provide the name) for the next scandal.

While waiting for the Becker appeal, Whitman also conducted the trial and obtained convictions in what was known as the Inspectors case (described further below) in May 1913.[52] The Inspectors case was extraordinary in itself, although overshadowed by the Becker trials. Just before the Inspectors trial, in March 1913 Whitman conducted the perjury trial against Ptl. John Hartigan and obtained a jury conviction. Immediately after the Inspectors trial, Whitman stepped in to conduct the retrial and obtain a jury conviction against Sgt. Peter Duffy, who collected payoffs for one of the convicted inspectors. The sergeant's earlier trial, which was not conducted

by Whitman, ended with a hung jury.[53] Whitman easily gained reelection as district attorney in November 1913, and then he personally handled the Becker retrial in May 1914. Using essentially the same evidence that the Court of Appeals had frowned upon after the first trial, Whitman obtained a quick conviction. The jury returned its verdict in less than two hours, and they reportedly had reached their decision in just a few minutes but decided to chat about the case for a while so they would not appear to have been too hasty.[54]

In less than two years following the Rosenthal murder, Whitman personally tried and obtained jury convictions in the cases of Becker I, Becker II, and the inspectors, in addition to successes in the less heralded trials against Sgt. Duffy and Ptl. Hartigan. Whitman and his office cracked the Rosenthal murder case, brought all of the killers to justice, and earned praise from the Curran Committee. These and other police prosecutions brought by Whitman's office turned out to be much more successful than the prosecutions brought in the Lexow era, although the Lexow-era prosecutions had a poor record that was not hard to top. During the second Becker trial, Whitman was already seeking support to obtain the Republican nomination for governor of New York.[55] After the trial, he campaigned from headquarters in the same skyscraper that replaced Rev. Parkhurst's church, and he was announced at political appearances as "the Fighting District Attorney."[56] Whitman won an easy victory in the Republican primary and then won the governorship by a wide margin in November 1914.[57]

Even compared to some who followed, like Thomas Dewey and Rudolph Giuliani, Whitman might still be without equal in New York for having gone so far in politics based to such a degree on his success as a prosecutor. After taking office as governor, Whitman began serious exploration of a presidential run. He faced criticism for excessive self-promotion, but considerable support started to line up for him.[58] The biggest impediment to his presidential

hopes was the decision by ex-New York governor Charles Evan Hughes to resign from the U.S. Supreme Court to seek the Republican nomination. Whitman joined the Hughes bandwagon and delivered the nominating speech for Hughes at the Republican convention in Chicago in June 1916.[59] Hughes gained the nomination after fending off a comeback attempt from another veteran of a New York police scandal, Theodore Roosevelt, and then Hughes lost a close general election to Woodrow Wilson.

As Whitman became governor, Becker's second trial conviction worked through the appellate process. In May 1915, the New York Court of Appeals affirmed the conviction.[60] Despite efforts by Becker's lawyers, his wife, prison reformer and ex-warden Thomas Mott Osborne, and many others, Becker's execution remained on schedule, all while Becker continued bitter denunciations of Whitman.[61] On the eve of Becker's execution, Whitman declared, "There was not a more clearly proved case of murder in the history of criminal jurisprudence," although some modern commentators disagree on the strength of the case against Becker.[62] It is clear that the Becker case was the most extraordinary prosecution of any New York City police officer in history. Further, there might not have been any police case more closely connected in the public's mind to a single prosecutor. Whitman was reelected to another term as governor in 1916, but was defeated by Al Smith in 1918. In recent years, any mention of Whitman most commonly occurs to note that he was the grandfather-in-law of former New Jersey governor Christine Todd Whitman.

The Prosecutions

A total of seventeen police officers of all ranks were charged in criminal prosecutions found to be related to the Curran-era scandal. As mentioned, most of the prosecutions involved

wrongdoing specifically disclosed in the hearings of the Curran Committee. In that way, the prosecutions reflected a district attorney's office that worked closely with or, at least, took its cues from the committee. Press accounts did not suggest that the district attorney sought a wider investigation or more indictments beyond the committee's scope. The total number of police officers prosecuted (17) dropped sharply from the number found in the Lexow era (47). The Curran era did not have a strong public voice like that of Rev. Parkhurst in the Lexow era demanding more criminal charges against police. Research did not disclose specific indications that the negative outcomes (almost no convictions) of the Lexow era prosecutions led to prosecutorial caution in the Curran era, but it seems likely that was what happened. In addition, the timing of events in the Curran era may have led to more focused and limited prosecutorial actions that left less room for criticism. From the Rosenthal murder in July 1912 to the second Becker trial in July 1914, D.A. Whitman and his office were heavily engaged in high-profile prosecutions related to the murder and other matters of police corruption. Critics would have had little basis to complain that prosecutors were derelict in duty, as Parkhurst had contended in the 1890s.

All of the seventeen police cases were prosecuted by the New York County District Attorney's Office. Although the post-1898 consolidated New York City included other county district attorney's offices, most notably the Kings County D.A. in Brooklyn, the offices outside of Manhattan do not appear to have brought any scandal-related police prosecutions. The Curran Committee report mentioned no other prosecutorial agencies besides the New York County District Attorney. The Rosenthal murder, of course, took place in Manhattan, as did the other prosecutable police conduct revealed in Curran Committee hearings.

As in the Lexow era, there were no federal prosecutions of any of the defendants. This would be the last of the cyclical scandals that did not include federal prosecutions. Legal debate at the time noted advantages for the prosecution side in cases charged in federal court. In particular, according to a state court judge in 1913, federal courts were more likely to allow multiple instances of wrongdoing to be handled in one trial instead of separate trials, thereby saving resources and increasing the likelihood of conviction.[63]

The ranks of the prosecuted police were spread quite widely, with the Inspectors case adding an unusually large number of very highly ranked officers. There were no detectives prosecuted, and the antiquated positions of wardman and roundsman no longer existed.

TABLE 4.1. Ranks of police charged in Curran–era prosecutions

Rank	No. charged	% of total
Inspector	4	23
Captain	2	12
Lieutenant	1	6
Sergeant	1	6
Patrolman	9	53
Total	17	100

The prosecuted officers were all male. It is quite certain that they were all white because the number of nonwhites in the police department was miniscule at that time, and press accounts would surely have mentioned if any of the department's nonwhites had been charged. Eleven of the defendants (65%) had surnames usually associated with Irish descent (Duffy, Hartigan, Skelly, Sweeney, etc.). The imprecision of this sort of observation, however, was shown in the

example of convicted Inspector James Thompson. He is not included in the count of eleven because the name "Thompson" is not commonly identified as an Irish surname, but Inspector Thompson advised the court that he was of Irish heritage (like his three codefendants) when answering pedigree questions after being convicted.[64] Even with imprecision, though, the name count does give support to the accuracy of the stereotype of the Irish cop in New York in the Lexow and Curran eras. Over time, the surnames of prosecuted cops will be some indication of the changing demographics of the department.

As in the Lexow era, the most common primary charged conduct for the defendants was bribery or extortion. In addition, the four defendants of the Inspectors case were charged with obstruction of justice and the investigation they were trying to obstruct involved bribery or extortion.

TABLE 4.2. Primary charged conduct in Curran-era prosecutions

Conduct	No. of cases	% of total
Bribery/extortion	9	53
Consp. to obstruct justice	4	23
Perjury	3	18
Murder	1	6
Total	17	100

The single murder case was, of course, that of Lt. Becker. Of the three perjury cases, one (against Ptl. Charles Foye) involved an unusual scenario described further below, and another (against Ptl. William Ferrick) involved having a civilian falsely swear to an affidavit.

The third perjury case (Ptl. John Hartigan) was distinctive as the first scandal-related police prosecution that appeared to use perjury as a modern prosecutorial tool. As part of a scheme to silence a witness who would testify against police about payoffs from "disorderly resorts," Hartigan delivered an envelope to a police captain. The district attorney called Hartigan before the grand jury, where he denied delivering the envelope. The criminal trial against Hartigan alleged perjury with respect to the envelope, not participation in the overall scheme. The trial jury quickly convicted Hartigan. He was sentenced to one of the longest terms imposed in any of the Curran-era prosecutions (two and a half to three and a half years) and the conviction was upheld on appeal.[65] Perjury would become increasingly important in subsequent police prosecutions as a way that prosecutors might proactively maneuver investigative steps to give an opportunity for an individual to commit the crime of perjury, which might be easier to prove than the substance of any underlying crimes. The use of perjury would be controversial, with critics contending that the prosecutor has manufactured a criminal offense and entrapped the offender.

The Curran Committee, as recounted later by Henry Curran, focused largely on administrative reforms to improve the police department until Mary Goode told the committee about operating a disorderly house in midtown and frequently paying off police. Curran's memoir described Goode very favorably, saying that her name was "perfect" for the "heroine of a Sunday School story," that she spoke "perfect English . . . without sign of coarseness," that she brought a "religious fervor" to her testimony, and that she had acted completely on her own to tell her story before the committee.[66] Curran's recollections might have been influenced by extraordinary charity work that Goode (under her real name of Mary Bell) performed after she gained fame before the committee.[67] At the time of the hearings and prosecutions, however, she seemed to be another example of how the effectiveness of a witness at a committee hearing may

not transfer to criminal court. Goode did not fare well under sharp cross-examination when she testified at a police department hearing, faced charges for violations of the "white slave law," and endured police scrutiny that bordered on harassment.[68] In the end, the district attorney did not even call her as a witness at the trial of the main police officer whom she accused. The prosecution called a different brothel operator to testify at trial against Ptl. John Skelly, and he was found not guilty after less than seven hours of deliberation by the jury.[69] Skelly's case was the only jury verdict of not guilty in all of the scandal-related cases brought by D.A. Whitman.

The other star witness before the Curran Committee at first seemed to present greater difficulties than Mary Goode. According to Henry Curran's recollections, George Sipp was the operator of a brothel in Harlem who paid off police and was pleased to read about Goode's testimony before the committee. Although Sipp was hard to locate and reluctant to testify, he testified effectively before the committee about making payoffs that were more extensive than what had been described by Goode.[70] Then Sipp allegedly accepted money from police through an attorney in exchange for staying out of state to avoid giving further testimony in New York. D.A. Whitman was fortunate that Sipp's initial cooperation led to more important cooperation from police witnesses, as described below about the Inspectors case, and Sipp's trial testimony turned out to be uneventful because he was no longer a primary target for the defense attorneys.[71] Post-scandal, in contrast with Mary Goode's devotion to charitable work, Sipp was arrested repeatedly. Charges against him included such tawdry offenses as offering to sell overcoats lined with "genuine" seal skin (in fact, the lining was made of noses and paws and other seal parts not used in genuine pelts) and being "too friendly" with an actress (adultery was a crime then, and Sipp's own son filed the complaint).[72]

The committee was not looking for civilian witnesses to testify about prostitution payoffs, but after Goode and Sipp fell into the committee's hands and turned out to be headline-grabbing witnesses, the committee's attention turned more toward prostitution. So, because the district attorney essentially pursued what had been revealed by the committee, the prosecutions were skewed toward police corruption based on prostitution as the vice behind the payoffs.

Table 4.3 classifies the prosecutions according to the primary underlying activity by the civilians who interacted with the police.

TABLE 4.3. Primary underlying civilian activity in Curran-era prosecutions

Activity	No. of cases	% of total
Prostitution	12	70
Gambling	3	18
Con game	1	6
Not applicable	1	6
Total	17	100

The "not applicable" case was the prosecution of Ptl. Foye for perjury, described below, which did not involve underlying unlawful civilian activity. The underling activity of the "con game" involved alleged payoffs to Capt. Dominick Riley from criminals who wanted to buy police noninterference with a variety of confidence games that swindled victims out of money. In particular, Riley allegedly received $1000 from the Gondorf Gang, which used schemes that included a phony horserace betting parlor that took a large wager from a wealthy victim, which was then "lost" when phony police "raided" the parlor.[73] The scheme inspired the plot of the 1973 Academy Award–winning movie *The Sting*, in which the main character, played by Paul

Newman, even used the name "Gondorf." The case against Riley was dismissed for lack of corroboration, although the real-life swindler Gondorf was convicted.[74]

One of the top findings of the Curran Committee's report (coming right after its call for the removal of police commissioner Waldo) was that gambling and prostitution were at the root of a variety of police wrongdoing. The criminal prosecutions were consistent with those findings, albeit weighed in favor of prostitution-based charges over gambling because of the civilian witnesses before the committee who happened to be in the business of prostitution. Farther down the list of findings by the committee was the category of "excise," which essentially meant the enforcement of Sunday and nighttime restrictions for liquor sales. The committee's recommendation was a vague call for legislative changes if "the public does not desire the enforcement of certain laws."[75] With none of the seventeen cases related to liquor as the primary underlying civilian activity, the criminal prosecutions were consistent with the committee's near indifference to liquor-based corruption. Prosecutions of the Lexow era had been quite different: liquor ran a strong second to prostitution as the primary underlying civilian activity. New York authorities might have grown weary in the battles waged in the previous twenty years over Sunday saloon closings. The legal status of the vices also contributed to the lower priority for liquor offenses. Gambling and prostitution were illegal vices while liquor was a legal vice, at least until Prohibition arrived a few years later.

Looking at the final dispositions, D.A. Whitman's prosecutions fared much better than the Lexow-era prosecutions. Of the nine police defendants who went to trial, seven were convicted, one had a conviction reversed on appeal, and one was found not guilty. All trials were by jury.

TABLE 4.4. Dispositions of Curran-era prosecutions

Disposition	No. of cases	% of total
Guilty at trial	7	41
Guilty plea	2	12
Total convicted	*9*	*53*
Dismissed	5	29
Conviction reversed	1	6
Not guilty at trial	1	6
Total not convicted	*7*	*41*
Unknown disposition	*1*	*6*
Total	17	100

For the "unknown disposition" in the case against Ptl. William Smith, it seems likely that the case was dismissed because other cases relying on the same cooperating brothel operator were dismissed, but no report of the disposition of Smith's case could be located.[76] The only reversed conviction was for one of the inspectors, described below. The single not guilty verdict at trial was for Ptl. John Skelly in a case connected to Mary Goode, as mentioned.

The cases for four of the five defendants who received dismissals involved some lack of evidence. The con game related to bribes allegedly received by Capt. Riley lacked corroboration, according to the district attorney.[77] Patrolmen Thomas Heaney and William Smith were charged together with taking bribes from brothel operator Rosie Hertz, but charges were dismissed after corroborating witnesses reportedly disappeared.[78] Ptl. William Ferrick, a member of Becker's strong-arm squad, was charged with perjury related to a civilian signing a false affidavit. Charges were dismissed after the civilian's credibility was damaged when he testified in the first Becker

trial.[79] Ferrick, still on the police force, would go on to serve as a pallbearer at Becker's funeral.[80] The fifth dismissal was Ptl. Charles Foye's perjury charge, described below.

Two of the charged officers, Ptl. Eugene Fox and Capt. Thomas Walsh, pleaded guilty and cooperated, described further below regarding the Inspectors case. As in the Lexow-era prosecutions, for a police officer to be willing to testify against other officers was unusual, but it did happen. Walsh died before sentencing; Fox received a suspended sentence. Table 4.5 shows the sentences for all of the convicted defendants.

TABLE 4.5. Sentences of convicted Curran-era defendants

Sentence	No. of cases
1 year	3
2½–3½ years	1
3–4 years	1
6–10 years	1
Executed	1
Suspended sentence (1 died before sentencing)	1
Total sentenced	8

Some of the sentences were quite harsh. The three convicted inspectors were only charged with misdemeanors, so their one-year sentences were the maximum allowed. Ptl. John Hartigan received the sentence of two and a half to three and a half years for his conviction for perjury; Sgt. Peter Duffy was sentenced to three to four years for bribery; and Ptl. Thomas Robinson received the longest sentence, six to ten years for bribery.[81] Lt. Becker was executed.

Samuel Seabury was the sentencing judge for every defendant upon whom a sentence was imposed (Justice Goff presided over the suspended sentence for Ptl. Fox).[82] Seabury presided over the trials for the nine defendants who chose to go to trial in a total of six trials (he handled the retrials for Lt. Becker and Sgt. Duffy after Goff handled their first trials). D.A. Whitman personally handled the prosecution of four of those six trials. He missed the trial of Ptl. Thomas Robinson, which took place very close in time to the Inspectors case. Whitman also missed the trial of Ptl. John Skelly (and its not guilty verdict). The aggressive prosecutor and the no-nonsense judge appeared to get along well during the court cases arising from the police scandal. Not long after, however, they waged a bitter campaign against each other as Seabury ran for governor as a Democrat against the incumbent Whitman in November 1916. Seabury lost a close race, perhaps due to indifferent support from Tammany Hall.[83]

Selected Prosecutions

Although the arrest, trials, and execution of Lt. Becker amounted to the most extraordinary prosecution of any New York City police officer in history (it is well chronicled elsewhere, as noted in chapter 1), the prosecution of the Inspectors case may have had a greater influence on police corruption at the time. At no other time in any of the corruption scandals were so many members of the upper ranks of the police department dragged into criminal court.

On a smaller scale, and largely overlooked in the history of prosecuted cops in New York, was the case against Ptl. Charles Foye. The case presented a highly unusual set of facts, and played out in the interaction between the investigative committee, the police department, and the district attorney.

The Inspectors

The Inspectors case was an example of how a prosecutor could pursue information from a questionable witness to a degree that caused targets of an investigation to take unwise steps. Watergate-like, the cover-up would surpass the underlying crime. Ultimately, though, the prosecutor needs a dependable witness, and D.A. Whitman found one through another person's misfortune.

Police corruption at the time was commonly known simply as the "System," a reference to the understanding that much of the conduct of business in the city required payoffs to police that would be passed to higher-ups in the department. Illicit businesses most often had to pay into the System. Supporters of the police department claimed that corruption was on the wane and, in a twist of logic, that the corruption scandal was confirmation of diminished wrongdoing by police. For instance, at a dinner in February 1913, Commissioner Waldo rose from the table he shared with former president Howard Taft and spoke:

> If you read the headlines in the New York Press and nothing else it would be quite impossible to attempt to defend the New York Police Department, but if you read the actual facts, the Police Department doesn't need very much defense in the minds of thinking people. As long as the grafter and the scamp was allowed to sell police protection and deliver the protection which he had sold, everything went along peacefully and quietly: nothing was said of the wrongdoing. It was only when a condition was produced where, when the grafter sold protection, he could not deliver it, that we had a police scandal.[84]

That is, rising integrity in the police department prevented bribe payers from receiving the accommodations they expected from the dwindling number of corrupt police. From Herman Rosenthal to Mary Goode, there was certainly truth to the claim that disgruntled purveyors of vice made reports that fueled the corruption scandal. D.A. Whitman and others, though, fully

believed in the ongoing corrupt System. Whitman repeatedly suggested that his investigation would lead to the highest echelons of the police department and then follow the money to jump away from the police to the highest levels of politics.[85] But his corruption investigation would advance no further than the Inspectors case, while Whitman himself would advance to the governor's office.

George Sipp's testimony before the Curran Committee focused on monthly payments he made to Ptl. Eugene Fox. Fox collected on behalf of Capt. Thomas Walsh, and Walsh passed money up the ranks to the level of the inspectors. Only sixteen police in the department held the rank of inspector. Each presided over an inspection district with a complement of plainclothes officers and responsibilities that included enforcement of vice laws.[86] After Sipp testified before the Curran Committee, he received a subpoena to testify before a grand jury. His attorney advised him to "Go South" to avoid testifying. Sipp went to Newark, New Jersey.[87]

With much to lose from Sipp's cooperation, Inspectors John Murtha, Dennis Sweeney, James Thompson, and James Hussey plotted to keep Sipp quiet. The scheme followed two paths that seemed inconsistent: funds were gathered to pay off Sipp while two women were induced to file affidavits accusing him of serious crimes. Sipp viewed the money, which was paid to him through his attorney, as inadequate, and he was angered when he was expected to have his son sign a false affidavit favorable to the police. Sipp traveled farther south, to Atlantic City, where he was arrested on the trumped-up charges. Not trusting the police and, perhaps, mindful of what happened to Herman Rosenthal, Sipp agreed to return to New York and accepted Whitman's promise to protect him. Sipp testified before a grand jury, which returned an indictment against Ptl. Fox. Capt. Walsh feared what his former bagman might say and tried to convince Fox to

keep quiet. Similar to Sipp, however, Fox was dissatisfied with the amounts offered to buy his silence, so he agreed to cooperate with the district attorney.[88]

Capt. Walsh was a thoroughly corrupt cop. As captain of a precinct in Harlem, he grew wealthy taking payoffs. After Sipp testified, Walsh became the point man in the conspiracy to keep Fox quiet. When those efforts failed, however, and Fox agreed to cooperate with the D.A., a more important circumstance came to influence Walsh: he was dying of a kidney ailment then known as Bright's disease. Walsh summoned the D.A. to his home in Harlem late in the evening. From his bed, and believing he was dying at that time, Walsh confessed to his crimes. He told Whitman, "I have been taking this graft for years, and I have always worried over it. It was always a terrible load on my mind. Now it is off my mind and I rejoice."[89] The four inspectors (Murtha, Sweeney, Thompson, and Hussey) were indicted a few weeks later on a variety of bribery and extortion charges.[90] Whitman's good fortune continued. First, Justice Seabury presided over all of the cases in court and he could be expected to push cases to trial quickly. Second, perhaps feeling the benefits of his confession, Walsh temporarily left his death bed and seemed possibly able to testify in court.

Most importantly, Whitman made a strategic decision to bring a separate indictment that charged all four inspectors together in a conspiracy to obstruct justice focused on the attempts to silence Sipp. Whitman's use of a conspiracy charge anticipated prosecutorial decisions in future scandals, when alleged conspiracies would become central in prosecuting police officers. Although conspiracy was only a misdemeanor-level offense in Whitman's time, the trade-off was acceptable as it was likely the only way to hold a single trial against all four inspectors. The other charges against the inspectors were contained in the tangle of multiple indictments as was the common practice of the time. Inspector Sweeney, for instance, had fifteen indictments

pending against him.[91] Walsh might be able to rally to testify at one trial, but not more than one. In addition, as he prepared to run for governor, Whitman would have a high profile mega-trial as a springboard.

The grand jury returned the conspiracy indictment on April 14, 1913.[92] Just two weeks later, the case went to trial. After completion of jury selection, Justice Seabury took the unusual step of ordering that all four defendants be held in the Tombs (the jail for Manhattan courts) to reduce chances of flight or jury tampering.[93] Seen in hindsight, Whitman's evidence was extraordinarily strong. Ptl. Fox testified effectively, and corroborative testimony came from Sipp's son and Walsh's wife. Sipp's own attorney testified about communicating the payoff offers to his client. Even D.A. Whitman himself testified (a practice not as unusual as it would be considered today) about the circumstances of meeting with one of the defendants.[94] Walsh, who was called as the prosecution's first witness for reasons both strategic and medical, testified aided by injection of a heart stimulant and with a doctor at the ready. He withstood four hours of cross-examination, providing explicit details of the defendants' crimes.[95] One newspaper noted that the gravely ill Walsh still "leaned out of his chair" and "gazed straight at the man he was testifying against" when questioned about the conduct of individual defendants.[96] George Sipp, who seemed to be the sort of cooperating criminal who might be problematic as a witness for the prosecution, testified uneventfully and was hardly cross-examined.[97]

Whitman delivered the summation for the prosecution, and the strength of the evidence led to a swift verdict. The jury convicted all four defendants after just 38 minutes of deliberation.[98] Walsh, known as "the Squealer" in the last months of his life, died six weeks after he testified.[99]

To no one's surprise, Justice Seabury sentenced all four defendants to the maximum for a misdemeanor conviction of one year incarceration at the penitentiary on Blackwell's Island (now Roosevelt Island). One newspaper noted almost gleefully that the "one time highest uniformed officials of the New York Police Department" were assigned to prison labor that included making mattresses and brooms.[100] The convictions of three defendants were upheld on appeal.[101]

The fourth defendant, former inspector James Hussey, obtained a reversal from the Appellate Division based on an analysis of the evidence, which found that the conspiracy proofs against him lacked required corroborative evidence from a nonaccomplice source.[102] Hussey had already served most of his sentence by the time the reversal was handed down. The suggestion that he might apply for reinstatement to the police department was met by the suggestion that such an application might cause prosecutors to pursue other charges against him.[103]

Patrolman Charles Foye

As a member of Lt. Becker's strong-arm squad, Ptl. Foye was expected to be familiar with the police practice of "turning out" or intentionally "throwing" a case in court by falsifying or minimizing evidence to result in a dismissal. The Curran Committee summoned him as a routine matter to testify on January 15, 1913. Foye was not cooperating with the committee, and his appearance was expected to be uneventful, with the usual denials of knowledge of wrongdoing that the committee commonly received from police witnesses.

Instead, as described in a press account, Foye's testimony "exploded a bomb" at the hearing.[104] He responded to initial questioning from committee counsel Emory Buckner with specific denials that he had made false statements in a liquor-related case and a blanket denial

that he had ever heard of any police officer throwing a case. He added, however, that on one occasion he was approached by an individual who asked him to throw a case. Buckner asked him to name the person who made the illicit request, and Foye calmly responded, "Mr. Curran," referring to Henry Curran, who presided over the committee.[105] Foye testified, with assurance and specificity, that Curran approached him on April 4, 1912, in the Criminal Courts Building and asked Foye to "go easy" on a friend by causing a dismissal of charges relating to violations at Smith's Saloon. Curran offered no money, but threatened to "fix" Foye like he had "fixed Lt. Becker" if Foye did not comply. Foye recalled the exact date of the incident because he had a court appearance on that day.[106]

As would be expected, Curran immediately denied Foye's accusations. Curran claimed that he had never seen Foye until that day before the committee. Further, Curran asserted that police detectives had recently tried to convince a newsstand operator to say that he paid a kickback to Curran, seeming to suggest that Foye's testimony was part of a police conspiracy to make false accusations against him.[107] At the committee hearing the next day, attempts to refute Foye continued. The proprietor of Smith's Saloon testified that he did not know Foye and never asked for any case to be fixed, and several witnesses contradicted Foye's claim of no wrongdoing in the liquor-related case. Foye was in a "savage and bitter mood" when he took the stand again and stuck to his story.[108]

A few weeks later, Foye was indicted for perjury based on his testimony before the committee.[109] Foye's specificity about the date of the incident allowed Curran to check his calendar, see that the day was Holy Thursday, and establish that he could not have seen Foye at the time alleged. The case seemed headed for trial until Foye's wife, who was pregnant, went to see Curran's wife to claim that Foye might have been approached by someone else. The next

day, Curran received an anonymous letter that read, "Don't be too hard on Foye. It was Alderman John F. McCourt went to see him, not you. Look into this." In fact, McCourt did bear a strong resemblance to Curran. After three hours of questioning by an attorney for the district attorney, McCourt remembered that he did have a conversation with Foye on behalf of one of his constituents about Smith's Saloon.[110]

Alderman McCourt, who was a Tammany Democrat, wrote a long, self-serving letter to the district attorney. He claimed that he had known the bartender at Smith's Saloon for twenty years, knew him to be of good character, became convinced of his innocence, and spoke with Foye only to be sure that the charges were correct. The perjury charge against Foye was dismissed. As for the possibility of an inquiry into McCourt's silence, McCourt scoffed, "Well, let them investigate the Sphinx."[111]

McCourt continued his career in Tammany politics with no significant fallout from his months of standing by while an apparently honest colleague was falsely accused and a cop who was more honest than most was unjustly indicted.[112] McCourt and Curran remained great friends. Foye was promptly reinstated to the police department. A news story the following year noted that Foye, as a Fordham man, was part of the trend that Theodore Roosevelt had encouraged toward more police officers having college educations.[113] Foye's family exchanged Christmas cards with the Currans.[114]

Conclusions

A number of factors likely contributed to the greater success of the Curran-era prosecutions compared to those of the Lexow era. D.A. Jerome's reforms, continued by D.A. Whitman, made the office better prepared to competently select, investigate, and prepare cases

than the politically dominated office of the 1890s. Beyond the professionalism of the district attorney's office, though, two personalities dominated the prosecutions. Justice Seabury presided over the dispositions of almost all of the cases, and the courtroom managed by him usually produced trial convictions, stiff sentences, and rare reversals. The most important personality belonged to D.A. Whitman. Whitman conducted most of the trials himself, and press accounts praised his trial skills, but more important might have been his selection and preparation of cases. Trial skills notwithstanding, a prosecutor would need strong evidence to produce the speedy jury convictions that Whitman obtained in major cases. Clearly, the cases brought by Whitman were more fit for presentation to juries than had been the Lexow-era cases.

Whitman managed to draw the focus of evidence away from the vice peddlers who tended to become problematic witnesses. His use of what critics might call a perjury trap in the Hartigan case and the conspiracy charge in the Inspectors case allowed evidence at those trials that did not rely on having to prove beyond a reasonable doubt that the police accepted payoffs to protect vice. When Whitman did have a vice-involved witness he took steps to minimize adverse effects at trial: he chose to use a different brothel proprietor instead of Mary Goode, and he managed to insulate George Sipp's testimony with stronger evidence from other witnesses.

Despite his successes, Whitman's handling of prosecutions raised issues. The prosecutions were limited almost exclusively to the wrongdoing disclosed before the Curran Committee, perhaps showing a failure to pursue other meritorious police cases. Whitman's strong public suggestions that his investigation would lead to persons higher up in the "System" than the inspectors never produced results, perhaps because Whitman left office to become governor or perhaps because those predictions were inflated to help his political aspirations.[115]

Whitman's use of a conspiracy charge in the Inspectors case was brilliant in some ways. It brought all four defendants into the same courtroom, the broad nature of a conspiracy charge allowed a wider scope of evidence, and the deathly ill Capt. Walsh was able to testify against all four at a single trial. On the negative side, though, the outcome raised questions about whether the prosecutor might have some duty to seek more evenhanded dispositions in cases. The defendants were high-ranking officers who committed grave acts of corruption in their charged conduct at trial, not to mention the charged conduct that did not go to trial as indicated by, for instance, the fifteen indictments against Inspector Sweeney. The conspiracy charge might have enhanced the probability of convictions at trial, but the misdemeanor level of the offenses limited the sentences that Justice Seabury could impose. The result was that lower-ranking officers convicted of what could be considered less serious wrongdoing received much harsher sentences after their trials. Ptl. Robinson was sentenced to six to ten years for taking payoffs. Ptl. Hartigan, who was on Inspector Sweeney's staff and delivered payoff envelopes to Capt. Walsh, was sentenced to two and a half to three and a half years for his perjury conviction. In perhaps the clearest example of inequitable dispositions, Sgt. Duffy was convicted of making collections for his boss, Inspector Sweeney, but Duffy was sentenced to three to four years while Sweeney was sentenced to one year.[116]

The Curran-era "System" of organized payoffs to cops would be called the "Pad" years later in the Knapp era of the 1970s. Prosecutors in later scandals would continue to struggle with predictions about which witnesses would be effective at trial, and the difficulty in making those predictions was certainly shown in the Curran era with the contrast between Mary Goode and George Sipp as witnesses. D.A. Whitman's successful strategy of charging as many cops as possible in a single indictment would backfire badly for prosecutors in the 1950s scandal. In

another contrast, while most Curran-era defendants stood trial by jury, by the 1990s most cops chose nonjury trials.

Notes

[1] Curran Committee Report, 8.

[2] "A 500-Foot Tower to Replace Church," *New York Times*, January 21, 1905. The Metropolitan Life Insurance Company Tower at East 24th Street and Madison Avenue was the tallest building in the world until topped by the Woolworth Building in 1913.

[3] U.S. Census Bureau, "Population of the 100 Largest Cities and Other Urban Places in the United States: 1790 to 1990," http://www.census.gov/population/www/documentation/twps0027/twps0027.html.

[4] Amy O'Leary, "Everybody Inhale: How Many People Can Manhattan Hold?" *New York Times*, March 1, 2012.

[5] Priam Saywack, "Immigration in New York City," http://www.fordham.edu/academics/colleges__graduate_s/undergraduate_colleg/fordham_college_at_l/special_programs/honors_program/hudsonfulton_celebra/homepage/the_basics_of_nyc/immigration_32224.asp.

[6] Trager, New York Chronology, 289.

[7] "Caruso Pays Up to the Black Hand," *New York Times*, March 26, 1910.

[8] "Bingham Admits Jewish Figures Are Incorrect," *New York Evening World*, September 16, 1908.

[9] "Monk Eastman Gang All Scattered Now," *New York Times*, June 21, 1909.

[10] "New Prisoner in Rosenthal Case," *New York Sun*, July 27, 1912.

[11] "Col. Gardner is Removed," *New York Times*, December 23, 1900.

[12] "Big Bill Devery Dies of Apoplexy," *New York Times*, June 21, 1919; Trager, *New York Chronology*, 285.

[13] Steinberg, "The 'Lawman' in New York," 753.

[14] George Lankevich and Howard Furer, *A Brief History of New York City* (Port Washington, NY: Associated Faculty Press, 1984), 198–205.

[15] Curran Committee Report, 1.

[16] Henry H. Curran, *Pillar to Post* (New York: Charles Scribner's Sons, 1941), 151.

[17] "Affidavits Muddle Schmittberger Trial," *New York Times*, September 22, 1906.

[18] Lardner and Reppetto, *NYPD: A City and Its Police*, 146–160.

[19] Curran, *Pillar to Post*, 150.

[20] Lardner and Reppetto, *NYPD: A City and Its Police,* 160.

[21] Breaking the Rosenthal story in the *Evening World* helped to launch the career of reporter Herbert Bayard Swope. Swope later won the first Pulitzer Prize for journalism.

[22] "Gambler Called to Grand Jury in War on Police," *New York Evening World*, July 15, 1912.

[23] Lardner and Reppetto, *NYPD: A City and Its Police*, 162–163.

[24] Ibid., 165–166.

[25] "Aldermen Name Lexowers," *New York Evening World*, August 5, 1912.

[26] "Aldermen Start a Police Inquiry," *New York Times*, August 6, 1912.

[27] Press accounts at the time often called it the "aldermanic committee."

[28] "Aldermen Start a Police Inquiry," *New York Times*, August 6, 1912.

[29] Curran, *Pillar to Post*, 173–174.

[30] Ibid., 158.

[31] Ibid., 152.

[32] Curran Committee Report, 12.

[33] Ibid., 8.

[34] Ibid., 9.

[35] Ibid., 5.

[36] Ibid., 2.

[37] Ibid., 7.

[38] "His Doctor Feared Death at Any Time," *New York Times*, September 12, 1913.

[39] Kline, a Republican, became mayor because he was the president of the board of aldermen.

[40] "Kline Ousts Waldo; Calls Him Childish," *New York Times*, January 1, 1914.

[41] "Mitchell Inherited Fighting Qualities," *New York Times*, July 7, 1918.

[42] David Von Drehle, *Triangle: The Fire that Changed America* (New York: Atlantic Monthly Press, 2003), 188.

[43] "Jerome Dies at 74; Long Tammany Foe," *New York Times*, February 14, 1934.

[44] "McClellan by 3,485 and Jerome by 11,450," *New York Times*, November 9, 1905. Publisher William Randolph Hearst narrowly lost the mayoral election.

[45] "Jerome Develops $22,000,000 Firm," *New York Times*, April 18, 1929.

[46] "Fusion Victory Seems Assured," *New York Tribune*, November 2, 1909.

[47] "Gaynor Elected," *New York Tribune*, November 3, 1909. Publisher William Randolph Hearst lost again in the mayoral election, running not as strongly as he had four years earlier.

[48] Lardner and Reppetto, *NYPD: A City and Its Police*, 164–166.

[49] "Becker Guilty of Murder in the First Degree; Midnight Verdict," *New York Sun*, October 25, 1912.

[50] "Whitman Takes Up Police Graft Cases," *New York Times*, December 14, 1912.

[51] People v. Becker, 210 N.Y. 274 (1914).

[52] "Sweeney, Hussey, Murtha, Thompson All Guilty—Jury Finds in 38 Minutes," *New York Tribune*, May 7, 1913.

[53] "Put Duffy in Tombs While Trial Is On," *New York Times*, June 1, 1913.

[54] "Mrs. Becker Collapses as Verdict of Death Is Announced for Husband," *New York Evening World*, May 22, 1914.

[55] "Claim 42 Counties for Mr. Whitman," *New York Times*, May 17, 1914.

[56] "Whitman Pledges Given by Five Clubs," *New York Times*, September 17, 1914; "Last Figures Show All Candidates Win," *New York Times*, September 28, 1914.

[57] "Glynn and Whitman Win," *New York Sun*, September 29, 1914; "Democrats Lose Entire State Ticket in Republican Sweep," *New York Evening World*, November 3, 1914.

[58] "Kings First in Line to Boom Whitman," *New York Times*, December 15, 1915; "Republican 'Big 4' Is Pulling 3 Ways," *New York Times*, February 21, 1916.

[59] "Five-Minute Cheer for Taft When Whitman Mentions Name in Putting Hughes in Nomination," *New York Evening World*, June 9, 1916.

[60] People v. Becker, 215 N.Y. 126 (1915).

[61] Dash, *Satan's Circus*, 342–344; "Becker Bravely Faces Chair; Attacks Whitman, Soothes Wife; Tells Priest His Accusers Lie," *New York Tribune*, July 30, 1915.

[62] "Whitman Ignores Becker Charges," *New York Tribune*, July 30, 1915. See, e.g., Dash, *Satan's Circus*; Cohen, *The Execution of Officer Becker*; and Logan, *Against the Evidence.*

[63] "Judge Tells How Criminals Escape," *New York Times*, April 30, 1913.

[64] "Convicted of Graft Conspiracy Without a Ballot," *New York Times*, May 7, 1913.

[65] People v. Hartigan, 210 N.Y. 144 (1913); "Speedy Conviction in First Graft Trial," *New York Times*, March 16, 1913.

[66] Curran, *Pillar to Post*, 163–170.

[67] "Mary Goode's Work Revealed by Death," *New York Times*, December 1, 1916.

[68] "Mrs. Goode Trailed; Fears the Police," *New York Times*, December 22, 1912; "Police Pursuing Mrs. Goode Again," *New York Times*, January 19, 1913.

[69] "Skelly Cleared on Bribe Charge," *New York Tribune*, May 1, 1914.

[70] Henry Curran, 169-170.

[71] "Fox and Sipp Bare Vice Graft Trail," *New York Tribune*, May 2, 1913.

[72] "Sipp, Police Graft Witness, Accused of False Advertising," *New York Tribune*, June 30, 1917; "Son Has Sipp Arrested," *New York Tribune*, September 29, 1914.

[73] "Dominick Riley Indicted as Collector of Graft from Wiretappers' Gang," *New York Evening World*, December 2, 1913.

[74] "Capt. Riley's Bail Bond," *New York Times*, July 3, 1914; "Gondorf Guilty of Wire-Tapping," *New York Times*, September 18, 1914.

[75] Curran Committee, 15.

[76] "$2,000,000 Graft in the Old Tenderloin," *New York Times*, March 21, 1913.

[77] "Capt. Riley's Bail Bond," *New York Times*, July 3, 1914.

[78] "Policemen Cleared," *New York Evening World*, December 10, 1914.

[79] "Hartigan Sentenced Loyal to Grafters," *New York Times*, March 26, 1913.

[80] "Funeral of Becker Marked by Turmoil," *New York Times*, August 3, 1915.

[81] "Hartigan Smiles at his Sentence to Sing Sing Cell," *New York Evening World*, March 25, 1913; "Duffy Gets Three Years," *New York Tribune*, July 9, 1913; "Six Years for Robinson, First Policeman Found Guilty of Graft Charge," *New York Evening World*, April 25, 1913.

[82] "A Sporting Chance Kept Fox From Cell," *New York Sun*, November 25, 1913.

[83] "Hughes Sure of Victory Scorns Wilson Shafts," *New York Sun*, November 6, 1916.

[84] "Trail into Headquarters," *New York Times*, May 7, 1913.

[85] "Whitman Trails 'System's' Heads," *New York Tribune*, February 10, 1913.

[86] Curran Committee Report, 9–10.

[87] "Fox and Sipp Bare Vice Graft Trail," *New York Tribune*, May 2, 1913.

[88] Ibid.

[89] "Walsh Admits Graft: Names Two Higher Up," *New York Times*, February 6, 1913.

[90] "Sweeney May Tell All to Whitman," *New York Sun*, February 20, 1913; "Newell Guilty; Murtha to Tell," *New York Sun*, March 28, 1913.

[91] "Four Ex-Inspectors Indicted Together," *New York Times*, April 15, 1913.

[92] "Four Inspectors Indicted," *New York Sun*, April 15, 1913.

[93] "Court Sends Police Heads to the Tombs," *New York Tribune*, April 30, 1913.

[94] "'I Want Immunity,' Murtha Said, Asking Whitman Interview," *New York Evening World*, May 2, 1913.

[95] "Walsh, Ill, Foils Police Defence," *New York Tribune*, May 1, 1913.

[96] "Walsh Tells Story of Graft," *New York Sun*, May 1, 1913.

[97] "Fox Lays Bare Grafters' Plot," *New York Sun*, May 2, 1913.

[98] "Sweeney, Hussey, Murtha, Thompson All Guilty—Jury Finds in 38 Minutes," *New York Tribune*, May 7, 1913.

[99] "Capt. Walsh Dies Rich From Graft," *New York Times*, June 22, 1913.

[100] "Four Ex-Inspectors Go to Prison Shops at Hard Labor Jobs," *New York Evening World*, May 10, 1913.

[101] People v. Sweeney, 213 N.Y. 37 (1914).

[102] People v. Sweeney, 146 N.Y.S. 637 (1st Dept., 1914).

[103] "Hussey Alone Wins Inspectors' Appeal," *New York Times*, March 7, 1913.

[104] "Policeman Foye Accuses Curran at Graft Hearing," *New York Evening World*, January 15, 1913.

[105] "Foye's 'Fairy Tale' Recoils on Tammany," *New York Tribune*, January 16, 1913.

[106] "Policeman Foye Accuses Curran at Graft Hearing," *New York Evening World*, January 15, 1913.

[107] Ibid.

[108] "Police Testimony Riddled at Hearing," *New York Tribune*, January 17, 1913.

[109] "Three More Indicted in Vice Graft Hunt," *New York Tribune*, February 11, 1913.

[110] Curran, *Pillar to Post*, 158–161.

[111] "M'Court Admits 'Doubling' Curran," *New York Tribune*, June 25, 1913.

[112] "Hussey to Fight for Dalton Post," *New York Times*, February 4, 1923.

[113] "Many College Men Now Among Police," *New York Times*, June 21, 1914.

[114] Curran, *Pillar to Post*, 161–162.

[115] "Whitman Trails 'System's' Heads," New York Tribune, February 10, 1913.

[116] "Gives Duffy a Term of 3 to 4 Years," *New York Times*, July 9, 1913.

Chapter 5

The Seabury Investigation–Era Scandal

> The only difference is that the stealing is more refined.
> —Retired D.A. William Travers Jerome commenting on corruption in 1933 compared to his era thirty years earlier[1]

The tallest building in the world, built on the site of Rev. Parkhurst's church in 1909, held that title for several years. Twenty years later, at the start of the next cyclical police scandal, Manhattan hosted a succession of buildings that were the tallest in the world. The Woolworth Building, 40 Wall Street, and the Chrysler Building all held the title in quick succession until surpassed in 1931 by the Empire State Building. New York appeared to stake its claim of prominence in the world by using the skyscrapers as ever-longer stakes.

The stream of immigrants that dramatically changed the city in the times of the earlier scandals slowed in the 1920s and 1930s. Several federal laws restricted immigration, including the Immigration Act of 1924, which based immigration quotas on the national origins of foreign-born persons in the United States according to the 1890 census. By using the 1890 census as the demographic baseline, fewer immigrants from Southern and Eastern Europe would be eligible because their numbers had greatly increased post-1890. The restriction seemed to address, for instance, the concerns expressed by Mayor Gaynor in 1912 about New York's "class of lawless foreigners"[2] (quite clearly referring to Italians and Jews). The foreign-born population of New York City stabilized at about two million from 1910 to 1940.[3]

Some clichéd superlatives heaped on America of the 1920s applied most decidedly to New York. The Roaring Twenties roared loudest on Wall Street; the Golden Age of Sports had no greater jewels than Babe Ruth's Yankees and their stadium built in 1923; and the Jazz Age flourished in New York's clubs and radio broadcasts. To one modern commentator, "New York entered its greatest time as a city" with the election of Mayor Jimmy Walker in 1925.[4] To another, the 1920s in New York were "that glorious decade."[5] The Wall Street Crash in late October 1929 would propel New York into the era of the next superlative: the Great Depression.

Unpopular in many areas of the country, Prohibition may have been most unpopular in New York. The city's speakeasies, which were conservatively estimated to number twenty-two thousand, might have contributed to the lively nightlife of the city, but making liquor illegal had dark side effects.[6] Organized crime flourished to control the liquor business, and New York mobsters formed the "family" structure that continues to the present. The city's health commissioner reported that more New Yorkers died from drinking alcohol in 1926 than in any year since 1910.[7] Many of the victims, including dozens over the Christmas holidays, died because some of the cheapest available drinks were made from industrial alcohol that was poisoned in the denaturizing process.[8] The illegal production of liquor and keeping the thousands of speakeasies open certainly required corrupt practices on the part of many in the police department. Amazingly, such corruption would not play a prominent role in the next police scandal.

The Triggering Event

The triggering event for the police scandal of the early 1930s occurred in 1928. The impact of the event gathered momentum under circumstances that included the ascendancy of

major political figures, the timing of elections, and the stock market crash. The event itself had extraordinary factual similarities to the prior triggering event in 1912 in that both involved nighttime gunshot murders of prominent Jewish gambler-gangsters in midtown Manhattan. The Herman Rosenthal murder in 1912, however, occurred with an ambitious prosecutor already in place to draw the quick connection between the murder and police corruption. In contrast, the 1928 murder of Arnold Rothstein resulted in an inept prosecution and a winding inquiry that disclosed other types of public corruption before drawing in the police department.

Arnold Rothstein has become one of the nation's most storied criminals. F. Scott Fitzgerald used him as the model for the gambler Meyer Wolfsheim in *The Great Gatsby*. The fictional Wolfsheim bragged that he had warned the real-life Herman Rosenthal not to step outside of the Metropole Hotel, where Rosenthal would encounter his killers.[9] In fact, Rothstein encouraged Rosenthal to make the payoffs that the police demanded, and he offered money to Rosenthal to leave town after Rosenthal complained to the press. As it turned out, the elimination of Rosenthal as a competitor in the gambling business helped to clear the way for Rothstein's rise. Rothstein accomplished what is still the pinnacle achievement in American gambling when, by most accounts, he participated in fixing the so-called Black Sox World Series in 1919. Despite a highly publicized investigation, Rothstein avoided any serious legal consequences. His opportunities expanded with the start of Prohibition just a few months after the last pitch in that World Series.[10] Spencer Tracy starred as the Rothstein character in a 1934 movie based on the memoir of Rothstein's widow. [11] Rothstein's bootlegging with organized crime figures in the 1920s formed the basis for Rothstein as a major character in the recent television series *Boardwalk Empire*.[12]

Unlike the more erratically behaved Rosenthal, Rothstein knew how to operate discretely and fruitfully with the most powerful players in commerce and politics. In a rare profile of Rothstein published less than a year before his death, Zoe Buckley of the *Brooklyn Eagle* stated that there "has not been a big prize-fight, a gold rush, a Wall Street flurry, a great horse race or a real estate boom in years that Rothstein hasn't had a hand in somehow."[13] One of Rothstein's biographers contends that Rothstein even brokered an arrangement with D.A. Charles Whitman by which Tammany Hall interests would not interfere with Whitman's prosecution of Lt. Becker for the Rosenthal murder if Whitman steered the investigation away from Tammany boss Big Tim Sullivan. The low-key Rothstein told journalist Buckley in 1927, "My code of life is absolutely simple: Help a friend, be a friend." But the journalist cautioned readers that Rothstein went after those who double-crossed him, and "when he's finished the ambulance will be coming for you, clang-a-lang-a-lang."[14]

Even as he came to make much more money from bootlegging and other illicit activities, Rothstein could not keep away from personal involvement in gambling.[15] He lost several hundred thousand dollars in a poker game at an apartment on West 54th Street in late September 1928. On the evening of November 4 of that year, Rothstein took up his usual spot to conduct business in a booth at Lindy's restaurant on Broadway. A telephone call summoned him to a meeting at the Park Central Hotel, a few blocks away on Seventh Avenue between West 55th and West 56th Streets.[16] Perhaps in preparation for paying at least some of the gambling debt, Rothstein sent his chauffeur (driving Rothstein's Rolls Royce) to another location to pick up cash while Rothstein attended the meeting.[17]

A few minutes later, Rothstein was shot once in the abdomen, and an elevator operator saw him staggering in a street-level service corridor of the hotel. The gun ended up in the street,

tossed either from a hotel window or from a fleeing car. Rothstein survived for almost two days in a hospital. Although in serious condition, he received visitors and even signed a will given to him by his lawyer. But when asked by a detective to identify his assailant, Rothstein flatly refused, saying, "You know me better than that, Paddy."[18] Rothstein died on November 7, which happened to be the election day when Herbert Hoover won an easy victory over New Yorker Al Smith and Franklin Roosevelt was narrowly elected governor of the State of New York to succeed Governor Smith. Rothstein had picked Hoover and Roosevelt as the winners and bet heavily on them with bookmakers across the country.[19]

Public controversy about the Rothstein murder quickly gathered momentum on two interrelated questions: first, who killed Rothstein and, second, how to handle a trove of papers that Rothstein left behind. The police investigation of the homicide, at best, made significant mistakes. At worst, police intentionally avoided building a case. Attention quickly focused on room 349 at the Park Central Hotel because that was the room to which Rothstein was summoned from his hangout at Lindy's. The room had been rented by George "Hump" McManus, apparently using a false name. McManus was one of the participants in Rothstein's big losing poker game some weeks earlier. A topcoat belonging to McManus (with his name inside) was still hanging in the closet, but the room appeared to have been vacated quickly, judging by the food and used glasses left there. A central problem was that police had no evidence that Rothstein had been in the room. No blood was found in the room or even in the staircase that Rothstein must have used to get to the ground floor. Police recovered some fingerprints in the room, although they failed to obtain Rothstein's fingerprints for comparison purposes. A close colleague of McManus, Hyman Biller, came by the room, but police shooed him away from the crime scene instead of questioning him.[20]

Perhaps sensing that the Rothstein murder could sow the seeds of his political downfall, as it eventually did, Mayor Jimmy Walker tried to control the situation. Less than two weeks after the murder, Walker met with police officials and demanded that they solve the crime in four days.[21] The police did not meet that deadline, and the mayor backed off on his threat.[22] Despite added police resources, the investigation continued to progress poorly. Potential witnesses were so few that police depended heavily on a twenty-four-year-old woman from Chicago who had taken a room by herself on the third floor of the hotel. From a photograph of McManus she tentatively identified him as one of the men in room 349 who invited her there for drinks. A hotel chambermaid was similarly invited for drinks and made a similar identification, but no witness could place any suspect with Rothstein. Whether they had a provable case or not, police were unable to locate suspect McManus.

The New York County district attorney at the time of the Rothstein murder was Joab Banton. Banton was first elected in 1921, then reelected in 1925 over the hero of the earlier police scandal, former D.A. Charles Whitman, who was attempting a comeback after losing the governorship to Al Smith. Although he was a Tammany Democrat, Banton built a reasonable reputation with administrative reforms and prosecutions of financial frauds. His top assistant D.A. was the highly regarded Ferdinand Pecora. Pecora would be considered later as Banton's possible successor, but his candidacy was nixed by Tammany Hall because, according to one press report, "he might not be amenable to political demands if he were elected."[23]

The Rothstein case dominated what would be D.A. Banton's last year in office. Pressed by political demands for action, or at least the appearance of action, Banton quickly presented over fifty witnesses to a grand jury. Numerous persons were held in custody under material-witness orders, including three men held in lieu of bail for $100,000 each because they were

present at Rothstein's losing poker game.[24] The result was a rushed, weak indictment returned within a month of Rothstein's death. Four men were charged: George McManus, Hyman Biller (the earlier object of police disinterest, now at large), plus two completely unidentified men (indicted as "John Doe" and "Richard Roe"). Banton's theory was that those four persons met Rothstein in room 349 of the hotel. Banton publicly proclaimed that he had a strong case.[25] Few believed him.

Political pressure on the police department continued. Mayor Walker had already replaced the commissioner less than a month after the Rothstein murder.[26] Just weeks after the indictment, an inspector and a deputy inspector "ceased to be members of the police force" because they made insufficient progress in locating the fugitive Biller and the two unidentified indicted men.[27] Even the detective who managed to locate the elusive McManus on the eve of the indictment was demoted for not following procedures in processing the arrest.[28]

Critical to the Rothstein homicide becoming the triggering event for the next cyclical scandal was the controversy over Rothstein's papers. As a meticulous businessman engaged in activities that included gambling, lending, and political fixing, Rothstein was known to have kept detailed records. His multiple offices, apartments, and safe deposit boxes might have contained the records. Since Rothstein lingered in the hospital for almost two days after being shot, persons interested in concealing his papers had a head start on persons with more legitimate intentions. Attention soon focused on what was in, or what was removed from, two file cabinets in Rothstein's Fifth Avenue home. The cabinets were moved to a bank in the custody of attorney Nathan Burkan, representing Rothstein's estate. Burkan then gave D.A. Banton access to the contents, totaling some sixty thousand documents. Banton assigned two assistant district attorneys and a police detective to examine the papers for evidence that might be either helpful in

the homicide investigation or indicative of other crimes related to Rothstein.[29] The very next day, Banton abandoned the review—either he was afraid of having to deal with sensitive matters that might be uncovered or he became convinced that incriminating documents had already been removed. Banton claimed that the review would take at least three weeks, supposedly an unacceptable time frame, so Banton accepted a promise from attorney Burkan that prosecutors would be advised if any papers relevant to their interests turned up.[30] Burkan, however, was a prominent Tammany Hall official so disclosure of any politically sensitive material that remained in Rothstein's papers was unlikely.

After the D.A's hurried indictment at the end of 1928, political concerns shifted in the mayoral election year of 1929. Mayor Walker had initially pushed for quickly solving the Rothstein murder, but the prosecution's weak case and the simmering controversy over Rothstein's papers made delaying the trial an appropriate route to avoid a blowup before election day. D.A. Banton took the position that he would not take the case to trial until, at least, he secured the presence of fugitive Biller.[31] Identifying and locating the indicted "John Doe" and "Richard Roe" seemed out of the question. Political pressure still grew. By June 1929, Banton decided to seek a judgeship instead of running for reelection as district attorney.[32] Fallout from the Rothstein murder would become the most contentious topic in the mayoral election, but Mayor Walker managed to maintain his popularity as the charming rogue. He seemed insulated from attacks, perhaps because of his early demands for action on the Rothstein case or because the departing D.A. Banton absorbed the attacks. But the momentum continued to grow for the Rothstein case to trigger the police scandal and a much wider political scandal.

Congressman Fiorello LaGuardia from East Harlem secured the Republican nomination for mayor. Socialists were most prominent among minor party candidates. Tammany Hall

overlooked the solid prosecutorial background and the Italian-American electoral appeal of top Assistant D.A. Ferdinand Pecora and instead picked Tammany loyalist Thomas C. J. Crain as the Democratic nominee for Manhattan's district attorney. Crain would resign from his judgeship to run for the district attorney position, which seemed to increase the likelihood that the outgoing Banton could easily pick up a judicial nomination.[33] Banton remained a target in the 1929 election even after he declined to run for reelection. In September 1929, the Republican nominee for district attorney attacked Banton about the Rothstein case: "The Rothstein case is a striking result of the District Attorney's policy of willful waiting. Where was the District Attorney while Rothstein lay for nearly three days in the hospital accessible to friends and his own lawyers? Why did he not at once go to him? Rothstein was the people's witness. The District Attorney was the people's lawyer. While he waited for [police] Commissioner Warren and the commissioner waited for him, the murderers waited for neither, and the case remains unsolved."[34] By the end of that month, while the prosecution against McManus was still awaiting trial, controversy over handling of the Rothstein case would end Banton's attempt to become a judge.[35]

Banton gave up on waiting to locate codefendant Biller and decided to attempt to advance McManus to trial before election day.[36] The trial judge, however, declined to agree and announced a post-election-day trial date, supposedly to avoid having the outcome of the trial affect the election.[37] Rothstein-related criticism began to shift more toward speculation about what Rothstein did while he was alive instead of concern about the investigation into his death, although the two areas were clearly related. Candidate LaGuardia boasted that he would "solve the Rothstein murder within a very few days after I arrive at City Hall."[38] Crain, the Democratic candidate for D.A., announced that he would know everything that there was to know about Rothstein matters within fifteen days after he took office. More specific allegations came from

Richard Enright, a former police commissioner running for mayor for the so-called Square Deal Party. Enright asserted that Rothstein extended loans and favors to many public officials, including judges.[39] So many insinuations about the Rothstein case came from campaigning political candidates that D.A. Banton was called upon to put the candidates before a grand jury to determine what information they might hold. Banton declined to do so.[40] Mayor Walker tried to avoid the skirmishing about Rothstein by following a Tammany plan that campaign issues would not be discussed until the completion of the voter registration period on October 15, just three weeks before election day.[41]

Two preelection developments that might not have stood out at the time among all of the other Rothstein allegations would turn out to be the most critical in leading to the police scandal. First, candidate LaGuardia specifically alleged that Magistrate Albert Vitale of the Bronx received a large loan from Rothstein. Judge Vitale claimed the loan was appropriate and threatened to sue LaGuardia for libel, but the story of that loan started a cascade of allegations about Vitale that would fuel demands for an investigation of the city's judges.[42] Second, the Republican majority leader of the New York State Senate threatened to introduce a resolution to begin an investigation of the Rothstein case by the state legislature.[43] He made the announcement after Governor Roosevelt declined to order a state investigation, as had Acting Governor Herbert Lehman, who often assumed authority while FDR sought health treatments in Hot Springs, Georgia.[44] This scenario of upstate Republicans versus city Democrats and a potential investigation by a legislative committee echoed the politics of the 1890s and creation of the Lexow Committee.

Whatever the level of controversy about the Rothstein case, it seemed neither to hurt Mayor Walker nor aid candidate LaGuardia. Walker won in a landslide. Perhaps voters were

distracted at the end of the campaign after the stock market plunged in late October 1929. The stock crash remembered as Black Tuesday was exactly one week before election day.

In the month after election day, the prosecution's case at trial against McManus was so weak that the jury never had an opportunity to consider the charges. After some grumbling about having to deal with hostile witnesses, even the assistant D.A. trying the case consented to the judge directing the jury to return a verdict of not guilty. The jury foreman followed the judge's instruction and announced that the jury found the defendant not guilty, and a smiling McManus departed the courtroom. D.A. Banton noted that he had "only twenty days more in this office" and lamented that "every case is subject to the human frailty of people who will lie."[45] Codefendant Biller was still at large. Police commissioner Grover Whelan, who took office just weeks after the Rothstein murder, wrote years later, "The failure to present incontrovertible evidence sufficient for a conviction was due entirely to the laxity of the police who had been assigned to the case originally and the commanding officers of the detective and uniformed forces at the time of the murder."[46] Self-serving as it was for Whelan, his position of pushing all of the blame to a time before his arrival as commissioner also removed much blame from D.A. Banton.

The Response

On December 7, 1929, just two days after the collapse of the case against McManus, a dramatic incident assured that Rothstein-related matters would not fade from public awareness. Armed robbers burst into a political dinner honoring Magistrate Vitale (Rothstein's debtor) and robbed the guests, including taking a detective's gun. Vitale showed that he was no ordinary

crime victim by making a few calls in the middle of the night and arranging the return of the detective's gun and the rest of the stolen property.[47]

Other controversies joined the Vitale affair. Newspapers reported that Magistrate George Ewald obtained his judicial post by paying $10,000 to a Tammany leader. A Brooklyn judge faced a federal indictment for receiving a fee in connection with the lease of city-owned piers. Pressure grew on Governor Roosevelt to take action, so he wrote a letter in August 1930 to the Appellate Division of the New York Supreme Court requesting an investigation of the Magistrates' Courts in the First Judicial Department, which included Manhattan and the Bronx.[48] Asking the court system to investigate helped Roosevelt to delay a potentially more politicized probe by Republican state legislators, and it seemed appropriate because early phases of the growing scandal focused on the judiciary. The Appellate Division promptly appointed retired jurist Samuel Seabury as referee to conduct the investigation. The most infamous event of that month occurred when Judge Joseph Crater left a midtown Manhattan restaurant, stepped into a taxi, and was never heard from again. His disappearance was generally believed to be connected to the widening corruption scandal. To "pull a Crater" became a popular expression for a person who dropped out of sight.[49]

Samuel Seabury had served as the judge on most of the police corruption cases in the prior police scandal. Most notably, he presided over in the second trial of Lt. Charles Becker when Becker was convicted in 1914 for the murder of Herman Rosenthal, the triggering event of the prior scandal. By a series of appointments in the early 1930s, Seabury dominated anticorruption efforts in New York City. Less than a year after the judiciary appointed him to head the Magistrates' Court investigation, Governor Roosevelt appointed him as commissioner of an investigation of D.A. Crain for New York County. In April 1931, the New York State

Legislature appointed Seabury as counsel to a committee investigating government corruption in New York City. Although the legislative committee was known as the Hofstadter Committee, after the state senator who chaired it, Seabury guided its work.

This series of investigative appointments both empowered Seabury and limited him. He was not a prosecutor; he could not press criminal charges, and he could not simply choose to look into any conduct by anyone who violated the state criminal code. While the investigations may have blurred in appearance into one grand Seabury Investigation, they were conducted separately. Seabury held one of his three titles— referee, commissioner, or counsel—depending on which investigation he was conducting. Each investigation issued a report or a series of reports.

At the first public session of the Magistrates' Court investigation in September 1930, Seabury's announcement of the purpose of the inquiry focused on whether magistrates bought their judicial positions and whether political considerations influenced their decisions on the bench. Neither the NYPD nor any other matters of policing appeared to be part of Seabury's agenda. Circumstances changed by the time of public hearings in November 1930. Seabury came upon a thread of corruption in the Magistrates' Courts that did not directly involve the magistrates themselves. The long-serving prosecutor in the Women's Court admitted to Seabury's investigators that he had accepted tens of thousands of dollars in bribes from defense attorneys and police officers to influence the dispositions of cases presented in the court. The Women's Court was one of the courts in the system of Magistrates' Courts, and the majority of cases in the Women's Court came from the NYPD's vice squad.[50] Intentionally or otherwise, Seabury's investigation had come across police corruption.

Seabury's investigative techniques were innovative and effective. He examined witnesses in private hearings before exposing those whom he selected to public hearings. Over one thousand witnesses were called to the private hearings; fewer than three hundred appeared at the public hearings.[51] This enabled the press-savvy Seabury to keep newspaper coverage lively. More importantly, Seabury's staff gathered extensive financial information concerning targets of the inquiry. The essence of Seabury's approach was to look for disparity between a person's salary and that person's financial holdings, usually in bank accounts. Where a disparity was found, the private hearings gave the witness an opportunity to explain the situation, and gave Seabury an opportunity to gather more information. By the time of a public hearing, Seabury was well armed to cross-examine the witness, and the press delighted in some of the outlandish responses.

The Women's Court prosecutor played a critical part in the police corruption scheme, but he was not present in the apartments where police arrested the defendants (mostly alleged prostitutes) who later paid to have their cases fixed. To demonstrate wrongdoing by police, Seabury needed someone who worked with the police. He found such a person in a disgruntled informant named "Chile" Mapocha Acuna. Born in Chile, Acuna was a "stool pigeon" for the police department, to use the vernacular of the time. His relationship with the police started with simply providing information in exchange for money; then he shifted to a more active role for the vice squad in 1929.[52]

A vice squad police officer might work undercover to make a "direct" case against an alleged prostitute, while an informant (or stool pigeon) was needed to make an "indirect case," in which the informant made the contact with the prostitute, and the police would barge into the transaction at an appropriate time. The informant would feign surprise, give a false name, and

sometimes be roughed up a bit by the police. In the official reports of an indirect case, the informant became an "unknown man" who was a customer of the prostitute.[53]

Acuna gave dramatic testimony for four days at public hearings. He described how he provided a list of prostitution locations, which vice squad members used to collect extortionate, or shakedown, payments from which Acuna received a share. More frequently, vice squad officers gave Acuna the contact information for a supposed prostitute, and Acuna would become the "unknown man" after setting up the woman for arrest. Acuna was not involved in extorting payments from the women or in fixing their cases in court. Most impressive was Acuna's memory. He identified over two dozen vice squad officers at the hearing, recalling all but one by name.[54]

While the police commissioner specially selected six lieutenants to secure Acuna's safety,[55] members of the vice squad took steps to prevent the appearances of incriminating witnesses at Seabury's hearings. The names or nicknames of other stool pigeons were known, but Seabury could locate only Harry Levey to appear at the hearings. Vice squad officers attempted to conceal Levey as well by paying him to flee to New Orleans. Levey was eventually located and testified that he often collected payoffs for the vice squad from operators of speakeasies.[56]

Seabury developed more of the picture of vice squad corruption with testimony from some of the arrested women. While most of the women framed by the vice squad's use of informants were indeed prostitutes, Seabury took care to elicit testimony from a handful of nonprostitutes who had been arrested by the vice squad. One law-abiding woman, Mrs. Olen, took in boarders and was arrested for maintaining a disorderly (prostitution) house by officers who had used an informant to entrap one of her female residents. She lost most of her savings to

the exorbitant fees charged by the bail bondsman and an attorney before the case was dismissed, after a share of the cash passed to the crooked prosecutor. Another testifying woman, Mrs. Potocki, was not a prostitute. In a sign of the times for the Prohibition era, she did make extra money by selling liquor to friends. Two vice squad officers gained entry to her home to have drinks, badly assaulted her, and arrested her for prostitution.[57]

Seabury asked Governor Roosevelt to pardon several of the women who had been convicted of crimes after vice squad abuses. Roosevelt and his presidential aspirations walked a thin line between needing to take action on public corruption while also needing to distance himself from it. More specifically, he wanted to build his national appeal while trying to avoid alienating city political powers before the Democratic convention. He promptly pardoned the women.[58]

With vice squad corruption already obvious, Seabury put icing on the cake by calling the officers themselves for sworn testimony. The financial investigation uncovered that some vice squad officers had tens of thousands of dollars in unexplained assets. Some officers gave contrived and transparently false testimony about secret inheritances, gambling winnings, and thrifty spouses. One vice squad member, Lt. Pfeiffer, claimed that he kept important papers in a "tin box." Another, Patrolman Morris, testified that he kept $50,000 in his tin box.[59] With "tin box," Seabury had a catch phrase that he could use on the political targets whom he would examine later.[60] Without prosecutorial powers, though, Seabury could do little more with the police corruption he uncovered.

The most prominent person in a law enforcement position to have his career ended by Seabury was Sheriff Thomas Foley of New York County. Questioned by Seabury, Foley offered some of the most outlandish testimony about a bountiful tin box. Governor Roosevelt weighed

the political concerns of dealing with Foley's strong Tammany support before finally dismissing Foley on Seabury's recommendation in February 1932.[61] The biggest fish that Seabury would catch managed to hold on a bit longer. Mayor Jimmy Walker resigned on September 1, 1932. Governor Roosevelt had been criticized for being too tolerant of Mayor Walker, but with the Democratic nomination in hand and after evaluating more revelations from Seabury, Roosevelt pushed hard for Walker's resignation ahead of the 1932 general election.[62]

The Prosecutors

Thomas C. T. Crain took office as New York County district attorney on January 1, 1930. He had won election easily by nearly a two to one margin over Republican Frederick Coudert.[63] Crain claimed independence from Tammany Hall during the campaign for D.A., but his background was Tammany through and through.[64] Tammany had its share of support from the moneyed aristocracy in addition to those who fit the more plebian image of the political club. Crain's maternal side included ancestors who arrived on the Mayflower, and his paternal grandfather served as an American colonel in the Revolutionary War. Crain's father held sufficient political influence to gain a diplomatic position in Italy, so the young Crain received much of his education in Europe. He returned to New York to practice law, joined the local Tammany Hall committee, and then he began to receive a series of prominent political appointments and nominations. He was sixty-nine years old and nearing mandatory retirement from his judgeship when he agreed to run for district attorney in 1929.[65]

Crain did not keep his campaign promise that he would know everything there was to know about the Rothstein case within fifteen days of taking office, but he did move quickly. On January 17, 1930, Crain recommended that the court dismiss charges against the former fugitive

Hyman Biller (who chose to show up after the prosecution's failure in the trial of McManus) and the still-unidentified John Doe and Richard Roe.[66] In the hope of a break in the Rothstein case, Crain kept the same grand jury in session for another two years. He finally asked that the grand jury be discharged on February 2, 1932.[67]

Crain found himself under personal and professional attack in March 1932 when the City Club of New York asserted that he was incompetent in his management of the district attorney's office. The City Club was among the most prominent of a number of organizations concerned with encouraging good government practices (and derided as "goo-goos" by those who disagreed with their efforts). Press accounts at the time consistently referred to "charges" brought by the City Club against the district attorney, but the City Club was a private organization that did not bring any sort of formal action by way of indictment or lawsuit. The organization and the prominent businessmen that belonged to it did, however, carry such prestige that when it communicated with Governor Roosevelt (and the press), official public action followed. The City Club complained that Crain, among other transgressions and omissions, had failed to act on matters of public corruption. The Democratic National Convention was just a few months away and Roosevelt did not want to look inattentive on corruption matters, particularly in highly publicized New York City affairs. In addition, Tammany Hall was supporting Al Smith for the 1932 presidential nomination so FDR might worry less about moving against the Tammany-favored Crain.

Roosevelt promptly appointed the busy Samuel Seabury to be commissioner of an investigation of the district attorney's office. In April and May 1932, Seabury conducted well-publicized hearings into Crain's conduct and his office's actions on over two dozen areas of investigation or specific cases. Seabury took pains during the investigation and in his final report

to state that Crain's honesty was not in question. Seabury's final report noted, "The proof before me shows that he was attentive to his office, that he kept long hours and that he busied himself in a variety of ways in the effort to faithfully discharge his duties. . . . There is no suggestion of any kind or character which reflects upon his personal integrity. There is not a line of proof that any failure to act in any of the cases referred to above was induced by any improper influence or by any unworthy motive."[68] Nevertheless, the report found that Crain "in many instances busied himself ineffectively and that he did not grasp or act upon opportunities for high public service which some of the matters referred to above presented to him."[69]

One of the few specific areas where Seabury found Crain's performance to be seriously deficient was in the investigation related to illegality in the Magistrates' Courts. Seabury's first investigative appointment was the Magistrates' Courts inquiry for the Appellate Division, and it was this investigation that opened the door into police corruption in the vice squad. The interwoven nature of the corruption scandal was particularly apparent here: FDR asked the Appellate Division to investigate the Magistrates' Courts; Seabury received the appointment to investigate; Seabury found police corruption in the Magistrates' Courts; Seabury referred cases to Crain for prosecution; the City Club complained to FDR about Crain's performance; FDR appointed Seabury to investigate Crain; Seabury found deficiencies in Crain's investigation of corruption in the Magistrates' Courts.

Seabury's final report on Crain found that he had adequately handled the specific Magistrates' Court cases that Seabury (wearing his other investigative hat) had referred to the D.A.'s office, which included the police cases. Seabury had harsh criticisms, however, for Crain's handling of a grand jury that heard evidence since shortly after Crain took office about abuses in the Magistrates' Courts. The final report scathingly concluded:

> It is not too much to say that political influences were active in these courts and that bribery and corruption in some instances polluted the course of justice. All of these conditions were left substantially untouched by any investigation which was made by the District Attorney of New York County acting through the grand jury that was convened for the purpose of making that investigation. . . . A dispassionate review of the minutes of this Grand Jury, and of the action taken by the District Attorney, compels the conclusion that the effort on the part of the District Attorney to eradicate these abuses which existed in the Magistrates' Courts was almost wholly ineffective. Little good came of it, and no aggressive steps were taken to eradicate the chief evils inherent in the system that prevailed there.[70]

Examination of the prosecutions by the district attorney (described below) supports Seabury's conclusions. Crain may have reasonably handled the cases referred by Seabury's initial investigation, but did little more. Seabury's narrow authority and Crain's reticence to use his own powers largely explain why the 1930s police scandal was more limited in scope compared to the other cyclical scandals.

In the middle of Seabury's hearings about the D.A.'s office, Crain won unanimous reelection to his position as a Sachem of Tammany Hall.[71] Weeks later, after the hearings ended and Crain's future as D.A. hung in the balance, Crain received a rousing ovation at a rally at Tammany's new meeting hall on East 17th Street.[72] Seabury's final report, although critical of some of Crain's job performance, dismissed most of the City Club's contentions and did not recommend that Crain be removed from office.

As the district attorney for New York County from 1930 through 1933, Crain handled all of the scandal-related prosecutions that charged violations of state laws. No other city D.A. brought cases. Two cases were prosecuted federally—one in the Eastern District of New York and one in the Southern District of New York. The respective U.S. Attorneys were Howard Ameli and George Medalie, both appointed by President Herbert Hoover. Although both offices

were expected to use financial information obtained by Seabury and strategies developed in Chicago based on individuals living above the means of their legitimate income, only the SDNY brought a tax case.[73] The most important federal prosecutor in the mix was Thomas Dewey, who was assigned by Medalie to try the tax evasion case against Patrolman James Quinlivan.[74] Dewey won the case and became interim U.S. Attorney when Medalie stepped down to support the 1933 mayoral run by Fiorello LaGuardia.[75] Dewey would later become the district attorney for New York County before his terms as governor of New York and his presidential candidacy.

The Prosecutions

A total of eighteen police officers of all ranks were charged in criminal prosecutions related to the Seabury-era scandal. That is comparable to the number prosecuted in the Curran era scandal (17) and much lower than the number prosecuted in the Lexow-era scandal (47). All of the defendants had been exposed in one way or another in Seabury's investigation of the Magistrates' Courts. As stated, New York County D.A. Crain was severely criticized by Seabury for not vigorously pursuing an investigation beyond the cases that were specifically referred to him. Crain certainly had other priorities and distractions—defending himself against accusations from the City Club was one—but to have a grand jury sitting and to bring no other police corruption cases was clearly a weak performance. Whether that weak performance was due to deference to Tammany Hall, ineptitude, bad judgment, advancing age, or some other factor cannot be determined.[76] Overall, the situation was similar to the scandal of the Curran era in that the district attorney's office did little beyond the scope of what was done by the outside investigating entity.

Also like the Curran era, the dominant prosecutive body was the New York County District Attorney's Office. No other district attorney in the city was mentioned as bringing scandal-related police prosecutions in Seabury's accounts or in media reports. All of Seabury's inquiry focused on the activities of the Manhattan-based vice squad of the NYPD, so if prosecutions were to be limited to the cases uncovered by Seabury then New York County would be the jurisdiction. On the other hand, it would appear that the other district attorneys were as reluctant to search for more police corruption as Crain.

As in the earlier scandals, the defendants were not a diverse group. All were male. About ten of the eighteen defendants had surnames commonly associated with Irish backgrounds. Almost certainly all were white because there were no press accounts suggesting otherwise. Just two of the defendants held ranks above the level of patrolman (one sergeant and one inspector), in contrast to the earlier scandals, which included a larger proportion of higher-ranking defendants. Table 5.1 shows the ranks of the defendants.

TABLE 5.1. Ranks of police charged in Seabury-era prosecutions

Rank	No. charged	% of total
Inspector	1	6
Sergeant	1	6
Patrolman	16	88
Total	18	100

By contrast, defendants ranking above patrolman made up almost two-thirds of those charged in the Lexow era and almost half of those charged in the Curran era. The simple explanation would

be that the 1930s cases focused on the arrests made by patrolmen in the NYPD's vice squad. The more speculative explanation would be that the district attorney and other decision makers did not want to expand the investigation to possibly include more defendants of higher rank.

Two developments in the Seabury era were most significant in the evolution of the scandal-related prosecutions. First, federal prosecutors charged defendants for the first time. These prosecutions for a tax violation and a Prohibition violation reflected the expanding scope of federal law enforcement authority resulting from changes in federal laws. The prior scandal was well under way before the Sixteenth Amendment made the modern federal income tax possible in 1913, and Prohibition did not become the law of the land until after ratification of the Eighteenth Amendment in 1919. Table 5.2 shows the emergence of federal prosecutions in territory still dominated by the district attorney for Manhattan:

TABLE 5.2. Prosecuting authorities in Seabury-era cases

Prosecuting office	No. charged	% of total
Manhattan D.A.	16	88
SDNY U.S. Attorney[77]	1	6
EDNY U.S. Attorney	1	6
Total	18	100

Second, perjury became the most commonly charged offense in the Seabury era. The skillful examinations by Seabury that maneuvered officers into testimony about tin boxes and other falsehoods were not used in the perjury prosecutions, likely because of some level of immunity that testifying before Seabury might have granted. Instead, most of the prosecutions alleged perjury based on false statements made by arresting officers in complaints or testimony

provided in the Women's Court. For example, a vice squad officer might state in a complaint or in testimony that the alleged prostitute was with an unknown man. The district attorney would have its prima facie perjury case from testimony by the cooperating "stool pigeon" that he, in fact, was the supposedly unknown man. Table 5.3 shows the breakdown of the primary charged conducts.

TABLE 5.3. Primary charged conduct in Seabury-era prosecutions

Conduct	No. of cases	% of total
Perjury	13	72
Assault	3	16
Prohibition violation	1	6
Tax evasion	1	6
Total	18	100

An indictment would only contain a perjury allegation from a single arrest by an officer under charging practices at the time. An officer who had testified falsely on many arrests would have to be charged separately for each instance. Separate indictments might even be required for different aspects of the officer's conduct on a single arrest. For instance, Patrolman O'Connor of the vice squad was charged in three indictments, two for perjury and one for conspiracy, all arising from the same arrest and the same victims.[78]

Just as the prosecutions did not charge the tin box perjuries that Seabury elicited at his hearings, the prosecutions also did not base charges on the actual financial holdings of cops that Seabury's investigation revealed. Seabury's financial investigations convincingly showed that some vice squad officers unjustly enriched themselves for years, but that sort of wrongdoing did

not form the basis of the prosecutions. Presumably, there was insufficient evidence to prove that the monies disclosed by the financial investigations were the result of extortion or any other criminal source. Or perhaps that information could not be used because immunity extended from the officers having been compelled to testify. In any event, the prosecutions pursued the cases referred by the Seabury investigation but did not use some of the more compelling evidence produced by Seabury.

With the focus of Seabury's inquiry on the Women's Court and the NYPD's vice squad, it is unsurprising that the real or falsely alleged civilian activity underlying the police corruption was prostitution. Table 5.4 shows the dominance of prostitution as the underlying vice in this cyclical scandal.

TABLE 5.4. Primary underlying civilian activity or alleged activity in Seabury-era prosecutions

Activity	No. of cases	% of total
Prostitution	16	89
Liquor	2	11
Total	18	100

The two liquor-based prosecutions were the two federal cases—one with actual Prohibition law violations and the other with income tax violations based on payoffs from speakeasies. Those cases are described further below.

On January 1, 1934, his last day in office, D.A. Crain released statistics about the number and dispositions of prosecutions in his term compared to the records of his predecessors going back to almost the turn of the century. Crain's purpose was to show that he managed a vigorous

office, in a continuation of the defensiveness he showed when attacked by the City Club and other critics. Two statistics from all cases in Crain's entire term (1930 through 1933) put his prosecutions of the police cases in perspective. Crain obtained guilty pleas on approximately 54 percent of the felony cases brought by his office (9,823 pleas in 18,234 cases). Also, in cases that went to trial the conviction rate was approximately 46 percent (1,398 convictions and 1,665 acquittals).[79]

Table 5.5 shows the dispositions of all eighteen of the Seabury-era prosecutions. D.A. Crain charged sixteen of those cases. The others were the federal cases, and they were evenly split at trial with one guilty and one not guilty.

TABLE 5.5 Dispositions of Seabury-era prosecutions

Disposition	No. of cases	% of total
Guilty at trial	6	33
Guilty plea	0	0
Total convicted	*6*	*33*
Dismissed	4	22
Conviction reversed	1	6
Not guilty at trial	5	27
Total not convicted	*10*	*56*
Unknown disposition	2	11
Total	18	100

Although the police prosecution statistics suffer from a small η and the lack of dispositions on two cases, comparisons with the other cases of Crain's years as Manhattan D.A. bring out two points. First, when cops went to trial they did as well or maybe a bit better compared to non-

police defendants. Some 46 percent of Crain's overall trials resulted in guilty verdicts, while it was just over 50 percent for the cops (six guilty and five not guilty at trials). Second, the police defendants had a far greater tendency to go to trial than other defendants. None of the cops pleaded guilty, while Crain obtained guilty pleas from more than half (54%) of his other felony cases. The lack of guilty pleas on police cases stands out, but it might be expected with police cases tending to have first-time offenders with concerns about keeping their jobs or pensions. Overall, the dispositions are consistent with Seabury's assessment that the cases he referred to Crain were handled competently. The problem was that Crain's investigation went no further.

The six convicted defendants, all patrolmen, received rather strict sentences. The sentences were comparable to those imposed in the Curran era, particularly if one disregards the execution of Lt. Becker. Table 5.6 shows the sentences imposed.

TABLE 5.6. Sentences of convicted Seabury-era defendants

Sentence	No. of defendants
3½ to 7 years	1
3 years	1
2½ to 5 years	2
2 to 4 years	2
Total sentenced	6

Trials of vice squad officers began with Patrolman Leigh Halpern, charged with perjury for having sworn in the Women's Court that the women he arrested were with an unknown male when, in fact, they were with one of Halpern's informants (not "Chile" Acuna). The outcome

was expressed succinctly in the subheadline of the *New York Times*: "Jury Takes Less Than an Hour to Clear First Policeman in Stool Pigeon Cases."[80]

The next trial was a perjury case based on Acuna's testimony. The jury convicted Patrolman Sidney Tait, but the jury's ambivalence about such a case came through when eleven of the twelve jurors asked the judge to be lenient with Tait.[81] The sentencing judge ignored the request and sentenced Tait to two and a half to five years in Sing Sing prison. To show the inconsistency possible in the jury system, Tait's partner was tried a few months later on similar charges arising from the same arrest. The jury deadlocked at six to six after only four hours.[82] Record of a final disposition for the partner could not be located, although it seems likely that he was never convicted. In a later trial, Patrolman John Glenn was convicted of perjury and sentenced to three and a half to seven years from a frame-up that used Acuna. Glenn may have hurt his case by unconvincingly testifying at trial that he had never used Acuna as an informant.[83] Glenn's victim in the frame-up contended that she had been paid to leave New York to avoid testifying against police.[84] One of Glenn's partners died before he could be brought to trial.[85]

Other perjury cases that relied on Acuna's testimony did not go well for the prosecution. Patrolman Robert Murray was acquitted by his jury, Patrolman William O'Connor received a directed verdict of not guilty, and Patrolman Christopher Confrey's charges were dismissed at the request of the prosecutor.[86] The most peculiar outcome for Acuna's accusations involved Patrolman John Stiglin. One case against Stiglin was dismissed in the middle of trial after the "framed" woman and her male partner unexpectedly changed their testimony.[87] A few weeks later, another Acuna-based case resulted in Stiglin's conviction, although the jury foreman added "a strong recommendation for mercy" when announcing the guilty verdict.[88] The judge

sentenced Stiglin to two and a half to five years at Sing Sing, but an appellate court reversed the conviction.[89] Although the court cited erroneous instructions by the trial judge as the reason for the reversal, the sympathies of the appeals court were apparent. The written opinion's opening paragraph emphasized the jury's plea for mercy, and one justice scathingly called Acuna "an infamous self-confessed criminal and stool pigeon, who did not claim to have ever done an honest day's work and who, in this case, was flatly contradicted by records and testimony which show that he cannot be relied upon as a truth teller."[90]

A clear problem arose in Acuna's transition from being a witness at Seabury's hearings to being a witness at criminal trials. At the hearings, Acuna performed well by displaying his formidable memory to answer prepared questions from Seabury or a Seabury staff member. If there were weak aspects to his testimony, the friendly questioning could tread gently. Acuna's shortcomings could be overlooked as his testimony covered a broad sweep of misconduct by the vice squad. By contrast, at the trials the focus would be on a single arrest in which Acuna was involved, and the questioning included aggressive cross-examination from defense attorneys. The criminal trials required proof beyond a reasonable doubt for a jury. The Seabury hearings only required putting on a convincing performance for the press and public.

Prosecutions that did not use Acuna also had mixed results. Patrolman Richard Ganley was convicted of perjury in arresting a former member of the Russian Ballet who was giving a dance lesson when Ganley's informant framed her.[91] Patrolman Walter Ambraz was acquitted of falsely testifying in the Women's Court about a married woman whom he arrested for prostitution. He might have helped his own defense when he testified at trial that he could identify a scar on the woman's body.[92] In what might have been the most serious vice squad case to emerge from Seabury's hearings, Patrolmen William Lewis and Edgar McFarland were

convicted of assault in the beating and frame-up of Mrs. Potocki and received sentences of two and a half to five years and two to four years, respectively.[93]

One prosecution of a vice squad member was handled in federal court in the Southern District of New York. Patrolman James Quinlivan was accused of collecting monthly payments from some 125 speakeasies in Manhattan and, as would be expected, not reporting the income on his tax returns. Collections were made by Harry Levey, one of the vice squad's informants. In exchange for the payments, speakeasy operators would not be raided by police. On infrequent occasions when other pressures required that a location making payments still had to be raided, Quinlivan tipped off the operator and very little liquor would be found in the raid as a result.[94] The prosecution built its case using the same tax investigators who had built cases against Al Capone and others in Chicago.[95] Chief Assistant U.S. Attorney Thomas E. Dewey won fairly quick guilty verdicts at trial, although the jury recommended mercy for Quinlivan.[96] The judge sentenced the defendant to incarceration for three years, and he served twenty-eight months in a federal prison in Atlanta.[97]

Vice squad officer James Brady had charges dismissed after he was tried to a hung jury on allegations of assaulting a woman during a raid.[98] Another vice squad officer, John Drake, was indicted for perjury, but record of a final disposition could not be located. His charges related to a frame-up arrest of a woman involving "Chile" Acuna, so it may have been dismissed. Finally, vice squad officer Daniel Sullivan had his perjury indictment dismissed after a key witness died of natural causes.[99]

In the Eastern District of New York, former police inspector Thomas Mullarkey was indicted in March 1932 on charges that included Prohibition violations and other charges related to operating an illegal still. Mullarkey's activities came to light through Seabury's investigative

efforts, but not his Magistrates' Court investigation of the vice squad. Rather, Seabury led the Hofstadter Committee of the state legislature to uncover more widespread evidence of municipal public corruption including some related to Prohibition violations. Testimony before the committee about Mullarkey led to his federal indictment.[100] He managed to remain a fugitive for almost two years, which allowed enough time for the repeal of Prohibition. As he went to trial, some charges against him were dismissed due to the repeal. The jury found him not guilty on a remaining conspiracy charge.[101] He was by far the highest-ranking member of the police department to be prosecuted in the scandal.

Conclusions

The most influential force behind the police prosecutions was a man who prosecuted no one and for whom police corruption was a low priority. Samuel Seabury uncovered the police corruption when he was actually searching for other corruption in the justice system, and then he prodded a reluctant district attorney into action. In public hearings he relentlessly examined everyone from the street cop to the stool pigeon and the district attorney to the mayor. Moreover, Seabury played this role after playing a different role of influence in the earlier Curran-era scandal (albeit sharing the stage with Charles Whitman). Although D.A. Crain managed to stay in office for his full term, the microscope that Seabury put Crain under might have served as a warning to future prosecutors that a reasonable level of prosecutorial zeal was necessary regardless of political concerns.

As with the earlier cyclical scandals, the Seabury-era scandal focused on vice-related corruption (this time actually arising from the vice squad). Prostitution (real or falsely alleged) was the primary underlying vice, and prostitution would never again have such prominence in

later cyclical police scandals. This is not to suggest that liquor and gambling were losing influence as corruption drivers in the early 1930s. Indeed, Prohibition certainly sent liquor-related police corruption to new heights. The Seabury-era focus on prostitution was simply a result of Seabury receiving the assignment to investigate the Magistrates' Courts and that court system happened to include the Women's Courts where the vice squad took prostitution cases. Then the investigation did not expand because Seabury preferred to pursue other corruption and D.A. Crain preferred to pursue as little as possible.

Seabury's hearings seemed of little help to the prosecutions beyond lighting a fire under the reluctant district attorney. The hearings might have even hurt the prosecutions because jurors familiar with the sweeping exposé conducted by Seabury might have been disappointed at the narrow scope and skimpy evidence of the trials. As in earlier scandals, the trials showed the difficulties that come in calling witnesses at trial who had been involved somehow in the police wrongdoing. "Chile" Acuna was a professional police informant (or stool pigeon) rather than a purveyor of one of the vices or a briber of police, as had been common for witnesses in prosecutions in the earlier scandals. He still had problems when he moved from testimony in a hearing room to testimony in a courtroom.

As in the Lexow and Curran eras, the police scandal in the Seabury era heralded Tammany's loss of the mayor's office to a Republican fusion candidate. In the Seabury era, however, the police scandal took a back seat to the wider municipal corruption scandal. The police scandal fully unfolded during Walker's last term and certainly contributed to LaGuardia's success in the 1933 election. Walker's other financial and ethical troubles were largely exposed by Seabury's relentless investigations, and those troubles led to his resignation, not the transgressions of his police department's vice squad.

Notes

[1] "Jerome Dies at 74, Long Tammany Foe," *New York Times*, February 14, 1934.

[2] "New Prisoner in Rosenthal Case," *New York Sun*, July 27, 1912.

[3] New York City Department of City Planning, "Total and Foreign-born Population New York City, 1790–2000," http://www.nyc.gov/html/dcp/pdf/census/1790-2000_nyc_total_foreign_birth.pdf (accessed April 30, 2014).

[4] Nick Tosches, "A Jazz Age Autopsy," *Vanity Fair*, May 2005.

[5] George Lankevich, *American Metropolis: A History of New York City* (New York: New York University Press, 1998).

[6] Jay Maeder, "Merry Christmas from Uncle Sam," *New York Daily News*, March 28, 2000.

[7] "Rum Toll in 1926 Largest Since 1910," *New York Times*, December 30, 1926.

[8] "Poison Rum Deaths Jump to 47 in City," *New York Times*, December 31, 1926.

[9] F. Scott Fitzgerald, *The Great Gatsby* (New York: Charles Scribner's Sons, 1925).

[10] Nick Tosches, "A Jazz Age Autopsy," *Vanity Fair*, May 2005.

[11] *Now I'll Tell*, directed by Edwin Burke, Fox Film Corporation, 1934. Based on Carolyn Green Rothstein, *Now I'll Tell* (New York: Vanguard, 1934).

[12] *Boardwalk Empire*, created by Terence Winter, Home Box Office, 2010 to 2014.

[13] Zoe Buckley, "Dubs Who Can't Get Rich Call Him Crooked, but Its Brains Says Rothstein," *Brooklyn Eagle*, November 27, 1927.

[14] David Pietrusza, Rothstein: The Life, Times, and Murder of the Criminal Genius Who Fixed the 1919 World Series (New York: Carroll & Graf, 2003), 79–81.

[15] Damon Runyon used Rothstein as an inspiration for characters in his short stories, including, most famously, the inveterate gambler Nathan Detroit in the musical *Guys and Dolls*.

[16] The Park Central Hotel had opened just one year earlier, in 1927. Since then, it has also been known as the Park Sheraton, the New York Sheraton, and the Omni Central. Most recently, it returned to its original Park Central name. In 1957, the barber shop in the hotel was the location of the murder of gangland boss Albert Anastasia.

[17] Bruce Rae, "The Rothstein Case: An Underworld Tale," *New York Times*, October 6, 1929.

[18] Pietrusza, *Rothstein*, 285–287.

[19] Leo Katcher, *The Big Bankroll: The Life and Times of Arnold Rothstein* (New Rochelle, NY: Arlington House, 1958), 327.

[20] "5 Policemen Tried in Rothstein Case," *New York Times*, January 11, 1930.

[21] Bruce Rae, "The Rothstein Case: An Underworld Tale," *New York Times*, October 6, 1929.

[22] "Mayor Fails to Act on Rothstein Case," *New York Times*, November 21, 1928.

[23] "Democrats Move to Placate Barry," *New York Times*, July 12, 1929.

[24] "Banton Spurs Hunt for Rothstein Files," *New York Times*, December 3, 1928; "Two More Hunted in Rothstein Murder," *New York Times*, December 7, 1928.

[25] "M'Manus is Indicted with Three Others in Rothstein Murder," *New York Times*, December 5, 1928.

[26] Grover A. Whelan, *Mr. New York: The Autobiography of Grover Whelan* (New York: G. P. Putnam's Sons, 1955), 145.

[27] "Meyer Now Leads Search for Biller," *New York Times*, December 25, 1928.

[28] Bruce Rae, "The Rothstein Case: An Underworld Tale," *New York Times*, October 6, 1929.

[29] "Banton Halts Hunt in Rothstein Files," *New York Times*, November 23, 1928.

[30] Pietrusza, *Rothstein*, 307.

[31] "A Verdict is Promised before Election on Murder Charge," *New York Times*, September 28, 1929.

[32] "Mitchell Backers Will Aid Walker," *New York Times*, June 12, 1929.

[33] "Crain Picked by Tammany for District Attorney," *New York Times*, August 9, 1929.

[34] "Coudert Charges Laxity to Banton," *New York Times*, September 20, 1929.

[35] Pietrusza, *Rothstein*, 358; "Irwin Untermyer Named for Bench," *New York Times*, October 1, 1929.

[36] "A Verdict is Promised before Election on Murder Charge," *New York Times*, September 28, 1929.

[37] "M'Manus Trial Off Till After Election," *New York Times*, October 9, 1929.

[38] "LaGuardia Doubts Rothstein Action," *New York Times*, September 24, 1929.

[39] "Enright Charges City Officials Got Rothstein Loans." *New York Times*, September 27, 1929.

[40] "Knight Plans Senate Inquiry on Rothstein," *New York Times*, October 2, 1929.

[41] "Enright Charges City Officials Got Rothstein Loans," *New York Times*, September 27, 1929.

[42] "Vitale Says Friend Arranged for Loan," *New York Times*, September 28, 1929.

[43] "Knight Plans Senate Inquiry on Rothstein," *New York Times*, October 2, 1929.

[44] "Roosevelt Won't Act Now in Rothstein Case," *New York Times*, October 3, 1929. Hot Springs, Georgia, would become more famous after Roosevelt built what became known as the Little White House there. He died there in 1945.

[45] "M'Manus Acquitted by Order of Court of Killing Rothstein," *New York Times*, December 6, 1929.

[46] Grover Whelan, *Mr. New York: The Autobiography of Grover A. Whalen* (New York: G. P. Putnam's Sons, 1955), 146.

[47] "Vitale Recovered Detective's Pistol 2 Hours After Theft," *New York Times*, December 24, 1929.

[48] The Magistrates' Courts handled the initial court appearances for a wide spectrum of cases, retaining jurisdiction over the large number of less serious cases and deciding whether the more serious cases had sufficient evidence to refer to other courts. In an earlier time, the Magistrates' Courts were known as police courts. In modern times, New York City's Criminal Court is most similar.

[49] Chambers, *Samuel Seabury*; Mitgang, *The Man Who Rode the Tiger*, 167–168); "Judge Crater Abruptly Appears, At Least in Public Consciousness," *New York Times*, August 20, 2005.

[50] Chambers, *Samuel Seabury*, 227–233.

[51] Northrop and Northrop, *The Insolence of Office*, vii.

[52] Ibid., 28–29.

[53] New York State Supreme Court, Appellate Division—First Judicial Department, In the Matter of the Investigation of the Magistrates' Courts: Final Report of Samuel Seabury, Referee. Reprinted in Robert M. Fogelson, Criminal Justice in America (New York: Arno Press, 1974), 82–84.

[54] Chambers, *Samuel Seabury*, 236–246.

[55] Limpus, *Honest Cop*, 143–144.

[56] Northrop and Northrop, *The Insolence of Office*, 31–32.

[57] New York State Supreme Court, *Final Report of Samuel Seabury, Referee*, 87–91.

[58] "Roosevelt Pardons Six Women 'Framed' by Police Vice Ring," *New York Times*, December 23, 1930.

[59] Northrop and Northrop, *The Insolence of Office*, 35–39.

[60] The testimony about the tin box inspired the song *Little Tin Box* in the 1959 Broadway musical *Fiorello!*

[61] "Roosevelt to Hear Farley Case Today," *New York Times*, February 16, 1932.

[62] "Roosevelt Started Fighting Tammany," *New York Times*, November 9, 1932.

[63] "Crain is Elected by 96,863 Margin," *New York Times*, November 6, 1929. Coudert would go on to serve several terms as a United States Congressman, until the late 1950s.

[64] "Asks How Could Crain Avoid Tammany Rule," *New York Times*, October 14, 1929.

[65] "Thomas C. T. Crain, Ex-Justice, Dies, 82," *New York Times*, May 30, 1942.

[66] "Biller is Cleared in Rothstein Death," *New York Times*, January 18, 1930.

[67] "Rothstein Inquiry Ends After 3 Years," *New York Times*, February 3, 1932.

[68] "Text of the Seabury Report Recommending Dismissal of the Crain Charges," *New York Times*, September 1, 1932.

[69] "Text of the Seabury Report Recommending Dismissal of the Crain Charges," *New York Times*, September 1, 1932.

[70] "Text of the Seabury Report Recommending Dismissal of the Crain Charges," *New York Times*, September 1, 1932.

[71] "Crain is Re-Elected a Tammany Sachem," *New York Times*, April 21, 1931. Derived from a term for a chief in Native American tribes, a Tammany Sachem was a high-ranking official of the organization. Former presidential candidate Al Smith was reelected to the position along with Crain.

[72] "Crain Gets Ovation at Tammany Rally," *New York Times,"* July 5, 1931. The Tammany organization had to sell the new meeting hall a decade later. The landmarked building at 100 East 17th Street now houses the Union Square Theater and the New York Film Academy.

[73] "Racket Clean-Up On; $200,000,000 Tribute Paid Yearly in City," *New York Times,* April 4, 1931.

[74] "Quinlivan Guilty of Evading Taxes," *New York Times,* September 5, 1931.

[75] "Judge G. Z. Medalie Dies in Albany at 62," *New York Times,* March 6, 1946.

[76] Seabury's final report on the investigation of Crain commented on his age, as did some press reports at the time. Crain turned seventy in his first months in office as District Attorney.

[77] Patrolman James Quinlivan also faced state charges, but the federal tax evasion charges were the most significant against him. "Quinlivan Indicted as a Tax Dodger," *New York Times,* April 16, 1931.

[78] "Vice Squad Men Cleared," *New York Times,* December 25, 1931.

[79] "Crain Says Record Stands with the Best," *New York Times,* January 1, 1934.

[80] "Halpern Acquitted of Vice Frameup," *New York Times,* February 21, 1931.

[81] "Policeman Guilty in Vice Perjury," *New York Times,* March 12, 1931.

[82] "Baccaglini Trial Ends in Deadlock," *New York Times,* June 6, 1931.

[83] "Vice Perjurer Receives 3½ Years," *New York Times,* March 19, 1932.

[84] Northrop and Northrop, *The Insolence of Office,* 50–51.

[85] "Patrolman Acquitted in Frame-Up Case," *New York Times,* December 23, 1931.

[86] "Stiglin on Trial as Vice Perjurer," *New York Times,* March 26, 1931; "Vice Squad Men Cleared," *New York Times,* December 25, 1931.

[87] "Accusers Recant: Patrolman Freed," *New York Times,* April 1, 1931.

[88] "Convict Policeman in Vice Frame-Ups," *New York Times,* May 24, 1932.

[89] "Policeman Wins Vice Case Appeal," *New York Times,* June 3, 1933.

[90] *People v. Stiglin,* 238 A.D. 407, 421 (1st Dept., 1933).

[91] "Ganley is Convicted of Vice Frame-Up," *New York Times,* April 18, 1931.

[92] "Ambraz Acquitted of Perjury Charge," *New York Times,* May 29, 1931.

[93] Northrop and Northrop, *The Insolence of Office,* 51–53.

[94] "Swears Quinlivan Ran a Speakeasy," *New York Times,* September 2, 1931.

[95] "Quinlivan Indicted as a Tax Dodger," *New York Times,* April 16, 1931.

[96] "Quinlivan Guilty of Evading Taxes," *New York Times,* September 5, 1931.

[97] "Quinlivan is Back; Faces New Charges," *New York Times,* June 5, 1934.

[98] "Will Drop Two Police Cases," *New York Times,* December 8, 1931.

[99] "Woman's Death Natural," *New York Times,* March 18, 1931.

[100] "The Facts Revealed in the Seabury Inquiry," *New York Times,* August 14, 1932.

[101] "Mullarkey Freed in Bootleg Plot," *New York Times,* March 14, 1934.

Chapter 6

The Harry Gross–Era Scandal

> And things being how they are, the back of the police station is out!
> —Nathan Detroit singing about the unavailability of one of his usual illegal gambling locations in the 1950 musical *Guys and Dolls*[1]

Postwar New York City seemed greater than ever in many ways. The city's manufacturing base appeared strong after surviving the Depression and bulking up for the war. City developers no longer raced to erect the tallest building in the world (the Empire State Building held that title securely for decades), but skyscraper construction boomed. Rival cities of the world—London, Paris, Berlin, Rome, Tokyo—were damaged by the war. New York was the most populous city in the world and, as home to the United Nations, New York could legitimately claim to be the capital of the world.[2]

Nevertheless, George Lankevich later described the city's postwar era as the start of "the long slide."[3] The U.N. headquarters reflected some of the city's conflicting directions. John D. Rockefeller, Jr.'s donated dollars and Robert Moses's political muscle cleared six city blocks on the East River for the U.N. complex. Although Moses pushed hard for a location at the former World's Fair site in Queens, he wryly observed that U.N. diplomats wanted midtown's "flesh-pots and all the rest of it."[4] The Secretariat Building (under construction from 1947 to 1952) used the city's first "curtain wall" construction popular for the International Style buildings that would modernize the appearance of the city and transform the skyline for both commercial and residential structures. A retrospective just twenty-five years later lamented that the "cathedrals, palaces, and temples" of the 1949 skyline had been replaced by "file cabinets."[5]

To accommodate the U.N. project, the city yielded to the growing influence of the automobile by expanding the East River Drive and access roads over the protests of some local residents.[6] The development demolished working-class housing on the site, dismissed at the time by the *New York Times* as "shabby tenements" and part of a pattern that would be increasingly common in the city, particularly for works associated with Robert Moses.[7] Also demolished at the site were slaughterhouses and breweries—two industries that were major employers in the city and that later almost disappeared. The U.N. delegate from Iraq was the sole dissenter in the decision to locate on the East River, citing reasons that included the undesirability of proximity to "adjoining industrial plants."[8] The Iraqi delegate did not need to worry for long as those industrial plants would soon be gone, and the city's diminishing industrial base became a major factor in "the long slide" according to Lankevich.

New York City's population reached a peak of nearly eight million in 1950 and declined for the rest of the decade.[9] The Depression and the war had delayed demand for new housing, Moses and other leaders promoted highway construction that opened the suburbs, and federal housing programs encouraged veterans to buy homes instead of renting city apartments. Many New Yorkers seemed to sense the decline of their city, or at least changes in the city that they did not care to stay for, and they fled to the suburbs. The Veterans Administration processed more home loans for Nassau County than for all of New York City.[10] So-called "white flight" became a major postwar demographic trend for the city. Ninety percent of the city's population was classified as "white" in 1950, already a decline from 1940.[11] The cyclical police scandal of the early 1950s would be the last in which the corrupt police received their illicit payments from persons who were mostly non-Hispanic whites.

Whatever sense of unease many New Yorkers had about their city was not assuaged by the police department. The cyclical scandal would expose rampant police corruption that appeared to extend high in the ranks, even to the extent of forcing the resignation of the commissioner. Citizens felt that crime was rising: newspapers screamed reports of crimes and fear of crime certainly contributed to residents moving out of the city. Yet, the police department showed low crime figures. It turned out that the department routinely failed to record reports of crime and failed to respond effectively. Only 2,520 burglary complaints were reported in 1949, a figure probably lower than 10 percent of the actual total. Cases assigned to "Detective Cann" were headed to being thrown out. Only 149 arrests were made citywide for drug sales in 1949, when illicit drug dealing was certainly on the rise.[12]

On the political side, Fiorello LaGuardia served three full terms as mayor, always running as a Republican and using other endorsements by minor parties. He was elected in 1933 after Mayor Jimmy Walker's scandal-induced resignation. Although LaGuardia received only about 40 percent of the 1933 vote, he benefitted from a strong showing by third-party candidate Joseph McKee, who had served briefly as acting mayor following Walker's exit. As in the two earlier police corruption scandals, voters turned against Tammany Hall by electing non-Tammany mayors, but only LaGuardia managed to hold the office for more than one term. His reelection in 1937 was a near landslide, and then the 1941 election was more competitive against Tammany Democrat William O'Dwyer. After LaGuardia's last term, Tammany saw its return to the mayor's office with O'Dwyer's election in 1945. Greater political influence for organized crime also saw a return with boss Frank Costello understood to be the most powerful figure in city politics.[13] As a Brooklyn native, ex-cop, and ex-D.A., Mayor O'Dwyer would be close to

many players in the next cyclical scandal, and he would become the scandal's most prominent victim.

The Triggering Event

The *Brooklyn Eagle* newspaper first published in 1841, counted Walt Whitman as one of its editors, and boasted the largest circulation in the nation for an afternoon newspaper in the final decades of the nineteenth century.[14] The twentieth century, however, was less kind to the *Brooklyn Eagle*. The consolidation of Brooklyn into Greater New York had diminished the need for a distinct Brooklyn publication, highways to Long Island transported readers away from the borough, and the paper finally shut down in 1955.[15] The *Eagle*'s last hurrah might have been winning the 1951 Pulitzer Prize for "the most disinterested and meritorious public service rendered by an American newspaper," which was a belated recognition for the paper's role in the triggering event of the police scandal of the early 1950s.[16]

Veteran reporter Ed Reid of the *Brooklyn Eagle* opened a series of articles on December 11, 1949 with a huge headline in the Sunday paper: "Lucrative Borough Rackets Feed Vast Crime Syndicate."[17] Reid launched his investigation barely two months earlier based simply on a conversation he overheard in a bar, the gist of which indicated that top police had set up a new boss ("Mr. G") to manage bookmaking parlors.[18] Reid's articles referred to organized crime groups as the "combine" or the "syndicate," seeming to avoid the term "Mafia," perhaps in deference to Brooklyn's large Italian-American population.[19]

The *Brooklyn Eagle* articles emphasized the effect of gambling on school children. Seen in hindsight, the tone of the articles was consistent with images of the 1950s-era moral panic about dangers to America's youth from sources such as comic books and communism.[20] Reid's

descriptions of the interactions between students and gamblers helped prompt Manhattan D.A. Frank Hogan's investigation of point shaving in college basketball games. That scandal brought down the national-champion basketball program of the City College of New York.

With the current acceptance of gambling in the United States, Reid's articles might now seem misdirected because his narratives focused more on the gambling itself and less on the related dangers of organized crime and police corruption that lived off the proceeds of the gambling. That might have been a product of Reid having more printable information about gambling than about the other criminal activity. It also reflected a time and place where illegal gambling had an importance in day-to-day life almost unimaginable from a modern perspective. Many city residents went to extraordinary lengths to gamble. The opening article of Reid's exposé contended that Thomas Dewey's successful prosecution of Charles "Lucky" Luciano for promoting prostitution had turned organized crime away from prostitution to illegal gambling.[21] Reid cited two reasons for this development: first, gambling yielded "clean" money compared to the "dirty" money from prostitution and other crimes; second, bookmaking (horse and sports betting) and lotteries (policy or numbers) yielded more money than other vices.[22] As a result, the ensuing police scandal focused almost exclusively on corrupt police activities related to gambling. The underlying vice activities of liquor and prostitution that were prominent in the earlier cyclical scandals were not apparent in the 1950s scandal.

Reid particularly focused on lotteries. Most betters were people of modest means, and small bets could be placed for pennies, so public participation had to be widespread in order to generate the dollars that attracted organized crime and accommodated police payoffs. Reid described the Italian lottery, convoluted calculations from daily racetrack handles to determine daily winning numbers, and "dream books" used to select numbers.[23] The acceptance of

gambling by much of the public, the "clean" nature of the money, and the sheer volume of the money all led to high police involvement. Some believed that the police were not simply taking payoffs from gambling operators, but that police themselves actually organized the gambling network.[24]

As for police corruption, Reid's articles were high on sensationalism, if a bit low on details. The most important allegation came from Reid's interview with a bookmaker. Reid described the interview in a theatrical Q&A manner that likely strayed from the actual conversation (Q: "You mean I gotta pay the cops?" A: "You are darn right!"). Reid's source described how police holding the high rank of inspector received the payoffs necessary for a bookmaker to operate in a particular territory.[25] As there were only twenty-two inspectors in the entire NYPD at that time, this allegation started the scandal aiming at higher targets in the department than any of the other cyclical scandals.

Part of what assured that Reid's series in the *Brooklyn Eagle* would become the triggering event for the next scandal involved the Brooklyn (Kings County) District Attorney, Miles McDonald. In 1947, McDonald arranged a meeting with the other county district attorneys, the police commissioner, and Mayor O'Dwyer. McDonald presented a thoughtful plan for reforms to reduce the police practice of filing legally insufficient complaints after arresting bookies and to increase the likelihood of bookies receiving jail sentences instead of fines. Mayor O'Dwyer voiced agreement with McDonald's plan, and then did nothing about it. Frustrated by this and by some of his other efforts against gamblers, McDonald listened intently when reporter Reid told about his upcoming series on gambling in the *Brooklyn Eagle*. McDonald encouraged Reid to pursue the stories and planned how the stories could be used for leverage to obtain the resources to follow up with an investigation.[26]

McDonald acted quickly in the wake of the *Brooklyn Eagle* stories. On December 22, 1949, just days after Ed Reid's series concluded, McDonald asked Judge Samuel Leibowitz of the Kings County Court for a three-month extension of the December term grand jury for the purpose of the gambling investigation. Notable from the start was the aggressive posture of Judge Leibowitz. He warned the grand jurors about the "lords of the underworld" and instructed jurors, "Therefore, you must not only go after the crook, but you must reach out for the man behind the crook."[27] The grand jury would be extended several more times. Judge Leibowitz would become a controversial figure as the scandal unfolded.[28]

Almost eighteen months after the first article, on May 8, 1951, the *Brooklyn Eagle* proudly announced on its front page that Ed Reid's articles had led to the Pulitzer Prize.[29] The next day, the *Eagle*'s front page announced another important result of Reid's articles: the grand jury returned an indictment that charged twenty-one cops and ex-cops and named fifty-six other cops as unindicted co-conspirators.[30] It remains by far the largest single indictment of members of the NYPD.

The Prosecutors and the Response[31]

The 1991 *New York Times* obituary for Miles McDonald began by touting that McDonald's "investigation into police corruption as Brooklyn District Attorney led to Mayor William O'Dwyer's resignation."[32] By that measure, McDonald's signature accomplishment as a prosecutor came against a man he never prosecuted and who had played a key role in aiding McDonald's rise to prominence.

McDonald appeared to have a script-worthy background for politics of that era in Brooklyn: Irish Catholic; raised in Brooklyn; educated at St. John's Prep, Holy Cross College,

and Fordham Law School.[33] His father had been the chief clerk of the Kings County Surrogate Court. He lived with his wife and four young children on Carroll Street in South Brooklyn (a street named after the only Roman Catholic signer of the Declaration of Independence). After law school McDonald worked in a Brooklyn law firm, and in 1940 he was hired to join the office of the newly elected Kings County District Attorney, William O'Dwyer.

O'Dwyer had his own pedigree. He was born and educated in Ireland, including studying for the priesthood. He emigrated to the United States and worked as a stoker on coal-burning ships, a plasterer at construction sites, and a bartender at a high-end hotel before becoming a New York City police officer and attending Fordham Law School at night.[34] The widowed O'Dwyer later married model and socialite Sloan Simpson. The press covered their courtship and honeymoon with nearly as much interest as it covered his politics and scandals.[35] He served as a judge before winning election as Brooklyn D.A. in 1939. O'Dwyer followed Thomas Dewey's game plan to use highly publicized prosecutions of organized crime figures to build a reputation. O'Dwyer quickly focused on the violent organized crime group well known to the public as Murder, Inc., although some of his efforts were later criticized. O'Dwyer made his losing run for mayor against LaGuardia in 1941, and then he took a leave of absence while on active duty during World War II. Newspapers referred to him as "Colonel" or "General" as he rose in military rank, and he won easy reelection as D.A. in 1943 during the leave of absence.[36] He resigned as district attorney in August 1945 to run for mayor again.

Meanwhile, an ailing President Roosevelt nominated Miles McDonald to move from the D.A.'s office to become the United States Attorney for the Eastern District of New York in February 1945. FDR had passed away by the time McDonald was confirmed for that position on May 16, 1945.[37] McDonald did not stay for long: less than three months later he accepted the

Democratic nomination to run for the district attorney position vacated by mayoral candidate O'Dwyer.

The prosecutorial politics rose to extraordinary levels for the election of 1945, even by New York City standards. Governor Dewey appointed fellow Republican George Beldock in August 1945 to serve as interim Brooklyn D.A. until the election, at which time Beldock would run on the Republican ticket against McDonald.[38] Beldock wasted no time. After only a few weeks in office, he requested that a special grand jury be empanelled to investigate his predecessor O'Dwyer's conduct as district attorney. The grand jury would look into how O'Dwyer and his office handled several cases. The most notorious case involved the unsuccessful prosecution of Murder, Inc.'s Albert Anastasia.[39]

Conveniently, the grand jury managed to hurry to complete the first phase of its work just one week before election day by issuing a "presentment."[40] The presentment contended that O'Dwyer and some others working in the district attorney's office had mishandled certain cases by "maladministration" and "gross laxity and inefficiency."[41] The grand jury explained that the presentation was so important that "no delay should be tolerated," in anticipation of the obvious contention that the presentation was timed to influence the election.[42] Interim appointee Beldock, then actively running to keep the job, promptly delivered a long radio address to blast mayoral candidate O'Dwyer by repeating the findings of the grand jury. O'Dwyer brushed aside the allegations, pointed out that he was serving his country at war during much of the time in question, and easily defeated his Republican opponent in the mayoral election.[43]

The *Brooklyn Eagle* called Miles McDonald the "forgotten man" of the 1945 election because his opponent Beldock campaigned by attacking O'Dwyer, not McDonald.[44] Still, McDonald won easily and even won by more votes than O'Dwyer's margin of victory in

Brooklyn.[45] Beldock would have almost as much time as interim D.A. after the election as he did before the election, so he continued the grand jury inquiry into mayor-elect O'Dwyer. The grand jury made another presentation that was critical of O'Dwyer before Beldock left office, and then McDonald wisely facilitated the continued work of the grand jury by keeping on staff the attorneys who handled the investigation.[46] The foreman of the grand jury even told the press that the grand jury would continue its work under McDonald instead of seeking a special prosecutor.[47] McDonald managed to give the appearance of being a straight shooter, perhaps he gained insight into the activities of his former boss, and the grand jury investigation of O'Dwyer would peter out anyway. A judge dismissed two of the main allegations against O'Dwyer on legal grounds, and Governor Dewey declined to take the steps necessary to continue the grand jury's work.[48]

By the next major municipal election season in the fall of 1949, Ed Reid of the *Brooklyn Eagle* had already started his research that led to his exposé on gambling, organized crime, and police corruption. Republican candidate Newbold Morris tried to make headway against Mayor O'Dwyer with campaign accusations that linked O'Dwyer with mobster Frank Costello.[49] More specifically, Morris produced a list of the locations of 124 betting parlors that operated so openly that they "couldn't possibly exit without corruption."[50] Samuel Seabury, the prominent anticorruption figure from the previous two cyclical scandals, endorsed Morris and urged battle with the "Tammany machine."[51] Bronx District Attorney Samuel Foley came to O'Dwyer's defense to remarkably declare, "I can say of my own knowledge that the city was never cleaner or freer from rackets than it is at present."[52]

The attacks on O'Dwyer did not resonate with the voters. He won reelection easily. In the race for Brooklyn district attorney, McDonald's Republican opponent emphasized allegations

that McDonald's office had failed to investigate charges of police brutality against African Americans.[53] McDonald won in a landslide. He was in a strong position to respond to the *Brooklyn Eagle*'s articles that started to be published just a month after the election.

McDonald's point person on the investigation was Assistant District Attorney Julius Helfand, who led the office's rackets division. In contrast to McDonald's route of Catholic schools, Helfand attended Brooklyn public schools and N.Y.U. law school. He served one term in the state assembly and practiced law before joining the district attorney's office in 1935 and working on the Murder, Inc. investigations. When McDonald joined the office in 1940 as a fellow assistant district attorney, Helfand gave him sound advice on how to try criminal cases.[54] McDonald and Helfand worked well together as the police corruption investigation unfolded. The *Brooklyn Eagle*'s leading political columnist noted that McDonald did not mind sharing the spotlight with Helfand.[55] The final report of the investigation by the grand jury and the district attorney in 1954 is called the Helfand Report by some commentators because of Helfand's involvement from start to finish, and because McDonald had become a judge by the time the report was issued.[56] Helfand would go on to become the chairman of the New York State Athletic Commission, where he took strong steps against corruption and organized crime influence in professional boxing.[57]

After Justice Leibowitz granted the extension of the December 1949 grand jury on December 22, 1949, McDonald put together an aggressive investigation. McDonald told Police Commissioner William O'Brien (who would later resign in the scandal) that he needed a group of young police officers newly graduated from the police academy because youthful-looking officers could better infiltrate gambling situations in schools. In fact, McDonald was more concerned with getting freshly minted officers because they were less likely to have been tainted

by corrupt officers.[58] Helfand interviewed prospects from the academy's graduating class of three hundred without telling them the prospective assignment, and he selected twenty-nine of the officers. The selected group was much more diverse than the baby-faced cops that O'Brien might have expected would be chosen. The officers reported to a hotel room on January 2, 1950, where Helfand warned them that they faced a job that would cause other cops to call them rats. They were given the opportunity to walk away from the assignment, but all twenty-nine stayed.[59] Many of those cops would later face physical threats and vicious taunts to their wives from veteran officers.[60]

The officers and other investigators worked undercover to infiltrate gambling rings at colleges and other locations. By April 1950, raids conducted pursuant to the investigation repeatedly found gambling paperwork that kept track of "ice," meaning payoffs to police. At a traditional corner candy store used by numbers runners to drop off their records of bets, a raid produced a list of the license plates of undercover cars used by the district attorney's office. When the NYPD inspector whose division covered the candy store was called before the grand jury, he ducked the subpoena by claiming he had a nervous condition that suddenly required him to check into a private sanitarium.[61] Clearly, growing indications of police corruption would overtake gambling in importance to the investigation, but the full extent of corruption could not be demonstrated by raids and arrests of uncooperative low-level gamblers. McDonald decided to target Harry Gross—the "Mr. G" that reporter Reid had overheard about in a bar months earlier.

Before McDonald could produce results about Harry Gross, however, the investigation hit a low point and nearly collapsed in the matter of Captain John G. Flynn. Flynn was the acting commander of the 16th Division with territory that included a raided bookie parlor in Bay Ridge. The grand jury subpoenaed Flynn, and he gave testimony that seemed routine. A few weeks

later, on July 16, 1950, he shot himself to death at his desk in his station house. Although Flynn left a suicide note specifically stating otherwise, Mayor O'Dwyer took the opportunity to claim that McDonald and the grand jury investigation had driven Flynn's actions. O'Dwyer compared McDonald's tactics to "witch hunts and the war of nerves made popular by Hitler." He also took aim at the *Brooklyn Eagle* for writing "sneering articles" about police.[62] Flynn's widow gave an interview to the *Brooklyn Eagle* in which she blamed the investigation for "hounding" her husband, who was "the most honest and clean living man who ever went to Brooklyn." She believed the motivation for the reckless investigation was that "Miles McDonald wants to further his political ambition—he wants to be a rackets-buster and eventually be Governor."[63]

The fallout from Flynn's suicide worsened when cops from police organizations encouraged Mrs. Flynn to confront McDonald. Some cops escorted her to a courthouse where McDonald was appearing on a case. She tearfully rushed up and screamed repeatedly, "You killed him. . . . My Johnny's blood is on your hands" at the stunned McDonald. McDonald tried to calm her while the cops who arranged the confrontation looked on. McDonald would call it the worst moment in his life.[64] Some six thousand NYPD officers attended Flynn's funeral in Queens—then the largest police funeral in the city's history.[65]

Fast-moving events, though, kept the Flynn suicide from impeding the investigation for long. Several police organizations wrote a formal complaint to Judge Leibowitz about how prosecutors treated Flynn. The judge promptly instructed the grand jury to suspend its work to consider the allegations in the complaint. On August 16, 1950, the grand jury issued a report finding that Flynn had not been mistreated in the investigation, that he seemed well during his testimony, and that the D.A. and his staff were "fair, fearless, and honest" in all matters before the grand jury.[66] Courtroom successes also bolstered the legitimacy of the investigation. By the

end of May 1950, the D.A.'s office had obtained four convictions of bookies and received additional funding from the city's Board of Estimate to hire more prosecutors and investigators.[67] The first indicted police officer came to trial soon after the Flynn funeral in late July 1950. Lt. James Reilly was charged with perjury relating to his receipt of $6,000 from a bowling alley operator. Although the trial judge issued a directed verdict of acquittal on legal grounds, the case presented by Assistant D.A. Helfand clearly showed Reilly's inappropriate receipt of what was an apparent payoff.[68]

By the time of Mayor O'Dwyer's outburst about witch hunts and Hitler barely eight months after his landslide reelection victory, his political future was in jeopardy. The state Democratic chairman and the Brooklyn borough president denied suggestions that they had arranged for McDonald to investigate O'Dwyer to force the mayor's resignation, while rumors circulated that O'Dwyer sought to be appointed U.S. ambassador to Mexico.[69] On the national scene, the U.S. Senate's Kefauver Committee started its televised road show of public hearings about organized crime on May 28, 1950, and seemed certain to delve into allegations about O'Dwyer. President Truman and Democrats worried about upcoming 1950 midterm elections and did not need reinforcement added to the stereotype of the corrupt big-city Democrat.

O'Dwyer saw the handwriting on the wall and secretly filed his retirement papers on August 1, 1950, while still denying rumors that he would resign. On August 15, he rode a train with his wife returning from Washington and told the press that President Truman had just convinced him to accept the ambassadorship to Mexico. A reporter described the much younger Mrs. O'Dwyer as "happy as a schoolgirl." In contrast, the mayor spat out terse responses to reporters.[70] Honored at a conference by the Police Benevolent Association a week later, O'Dwyer said proudly that he had stood up for honest cops in the Brooklyn investigation who

were "being pilloried and ruined unjustly."[71] A Broadway parade honored the mayor on August 31. He had waited the minimum of thirty days after he filed for retirement in order to preserve his pension. Reminiscent of disgraced ex-mayor Walker sailing from the West Side piers to Europe eighteen years earlier, O'Dwyer left town on a train from Grand Central en route to Mexico.[72]

While the Flynn suicide and the O'Dwyer resignation dominated headlines in the summer of 1950, the investigation continued to build a case against Harry Gross. Gross's main wire room was located in a frame house in Inwood on Long Island, just beyond the city's limits. By September, investigators tapped phones in the wire room, quickly picking up countless gambling calls and a few explicit calls of Gross or his underlings speaking with police about payoffs. These wiretaps appear to be the first ever used in an investigation related to one of the cyclical police scandals. McDonald's police and investigators raided the Long Island wire room and other Gross-related locations simultaneously on September 15, 1950. Thirty-four persons were arrested, none of whom were police.[73] One of the raided locations was across the street from the D.A.'s office. Investigators arrested Gross at his hotel suite in Brooklyn Heights.[74]

Similar to how the courts under Judge Seabury seemed hospitable to Manhattan D.A. Whitman's efforts in the Curran-era scandal some four decades earlier, the hard-nosed judge Samuel Leibowitz presided over judicial actions that helped the Brooklyn investigation.[75] Judge Leibowitz extended the December 1949 grand jury, instructed grand jurors strongly about their duty, and provided McDonald with court orders and arrest warrants as needed. After Gross's arrest, Judge Leibowitz moved quickly on two fronts. First, he lashed into the police department as he presided over an unusual and highly publicized night session of his court for Gross's arraignment. Police Commissioner William O'Brien, already irritated that he had been "ordered"

to appear at the court session, delivered the blame-shifting argument that bookmaking existed because the courts never gave jail sentences to arrested bookies. Leibowitz responded, "An honest Police Department can stop bookmaking in 24 hours." O'Brien sat in court as Leibowitz permitted prosecutors to play a particularly incriminating wiretap tape. O'Brien's remark about taking action when he had "proper evidence" caused the judge to raise his voice, "What's the matter, don't you believe what you hear?"[76] The special court session amounted to judicial theater to gain further momentum for the burgeoning scandal. The next day, Commissioner O'Brien announced a massive NYPD inquiry into corruption. A few days later, he resigned.[77]

Judge Leibowitz's second move was more substantial, yet still theatrical, as he attempted to convince Harry Gross to assist investigators. Gaining Gross's cooperation had become the key to McDonald's investigation firmly making the jump from gambling to corruption. After his arrest on September 15, Gross went back and forth on whether he would divulge all to prosecutors. On September 19, Judge Leibowitz twice broke from public court sessions to have long private talks with Gross. Only Gross, the judge, and a court stenographer were present (with the transcriptions soon released). Gross still wavered, so Leibowitz ordered that he be held as a material witness at the request of Assistant D.A. Helfand on $250,000 bail and a twenty-four hour guard on his jail cell by the sheriff's office.[78] Gross's inconsistent behavior raised red flags for prosecutors that, with hindsight, should have been heeded more closely.

Gross remained incarcerated, his bail reduction applications denied, and he stood trial on bookmaking charges in January 1951 before the ubiquitous Judge Leibowitz. The D.A.'s case was overwhelming. An associate testified that Gross's twice-monthly payoffs to police were so large that they needed two men to carry the cash.[79] After hearing testimony from just one other witness, Gross pleaded guilty to sixty-five counts of bookmaking. The counts were all

misdemeanors, but he faced substantial prison time with Judge Leibowitz not being likely to shy away from imposing consecutive sentences. Gross still balked at cooperating with prosecutors, and he remained in custody under high bail. By the end of February 1951, Gross relented and began multiple grand jury appearances in which he fully described his corrupt relations with police in response to Assistant D.A. Helfand's questions.[80] By mid-March, in reward for his cooperation and testimony, Gross had his material witness order lifted and his bail reduced to a manageable $25,000.[81] Based on Gross's testimony, the grand jury returned the indictment charging twenty-one police officers on May 9, 1951. The indictment named another fifty-six police officers as co-conspirators who were spared being charged because of statutory requirements for corroboration.[82]

Three particular aspects of the investigative response by McDonald and the Brooklyn D.A.'s office were new or unusual in the cyclical scandals, and three other aspects seemed borrowed directly from earlier playbooks.

In the new or unusual category, first, the investigation directed more attention to very high-ranking police than in the earlier scandals. McDonald pushed hard to gain Gross's cooperation in order to implicate police at least as high as the inspector level. Two inspectors would be indicted and another six were named as unindicted co-conspirators in the massive May 1951 indictment.[83] In November 1951, Assistant D.A. Helfand contended that this top-down (rather than bottom-up) attack on police corruption was "as it should be," even though the sweeping indictment of police had already suffered its courtroom disaster, including dismissal of charges against the indicted inspectors.[84]

Second, investigators cleverly used the NYPD's own records to support allegations that payoffs affected police actions. At the heart of the corruption scheme was police protection of

known gambling locations, so investigators obtained police reports of the previous responses to some of those locations. For instance, a location in Bay Ridge, Brooklyn. was clearly a horse-betting parlor—civilians complained repeatedly to police about it, a search warrant seized extensive gambling evidence, and gamblers who operated there confirmed what was obvious. To support the charges that police were paid off, investigators obtained the records of the police department's 16th Division, which showed half-hearted responses to the civilian complaints that concluded, "complaint unwarranted."[85] Prosecutors used those discrepancies in quizzing police officers in the grand jury.

Third, and perhaps most important of the new developments in the Gross scandal, investigators used telephone wiretaps to obtain evidence. The underlying crime of gambling that fueled the corruption relied heavily on telephone communications, and parties using the phones seemed unguarded in their conversations. The New York State criminal code allowed prosecutors to apply for a wiretap order with relative ease.[86] D.A. McDonald had evidence against Gross for months, but decided to make the move to arrest Gross after intercepting particularly explicit telephone calls.

Regarding aspects of the investigative response that were familiar from earlier times, first, as noted above, the seemingly close coordination between D.A. McDonald and Judge Leibowitz harkened back to the relationship between D.A. Whitman and Judge Seabury in the Curran-era scandal. The crusader-like zeal of Judge Leibowitz may have emboldened McDonald to charge ahead with the investigation in the face of strong police and political opposition, not to mention the public's ambivalence about the crime of gambling.

Second, prosecutors expanded on the approach of financial investigations of police as pioneered in the 1930s Seabury era. Payoffs were so common (and oversight so ineffective) that

some officers kept their ill-gotten monies in their bank accounts. The Brooklyn D.A. issued subpoenas for cops' bank records to find signs of payoffs.[87] After the police inspector avoided testifying about his finances because of his supposed nervous condition, the undeterred McDonald simply turned to questioning the inspector's wife.[88]

Part of the process of gathering financial information about a police officer at times included requiring the officer to fill out a twenty-three page, sixty-eight question questionnaire.[89] Then the officer might be required to sign a waiver of immunity prior to giving grand jury testimony, all under the threat of losing his job.[90] Courts would later disapprove of this tactic as violative of the Fifth Amendment, but in the Gross-era scandal it produced a third similarity to earlier scandals—that police defendants were frequently charged with perjury. The prosecutorial tool of perjury had come into use in the Curran era and dominated prosecutions in the Seabury era. In the Gross era, perjury became the charge used in the reindictment of some officers after their original charges were dismissed in the prosecutorial fiasco of trying to use Harry Gross as a trial witness. In fact, the great majority of officers ultimately convicted of a criminal charge were convicted of perjury.

The Prosecutions

A total of thirty-five police officers (or ex-police officers) faced criminal charges relating to the scandal of the 1950s. That was much higher than the number charged in the Seabury era (18) and the Curran era (17), but lower than in the Lexow era (47). While the number of charged cops in the Curran and Seabury eras might have been limited because the prosecutors largely confined themselves to the matters specifically referred to them by the investigative commissions, McDonald and the Brooklyn D.A.'s office had no such limitation because there

was no independent commission in the Gross era. The oft-extended 1949 December grand jury was, like most grand juries in America, nominally independent while being steered by the prosecutor. Research uncovered no instance where D.A. McDonald failed to obtain exactly the action that he wanted from the grand jury. However, the prosecutorial freedom suggested by the D.A. not having to follow a path dictated by a commission did not produce wide-ranging prosecutions. The dominance of gambling-based cases gave this scandal the most narrowly focused prosecutions of any of the cyclical scandals.

For the only time in all of the cyclical scandals, the center of prosecutive activity shifted away from Manhattan. This scandal was, of course, a Brooklyn scandal that was investigated by a district attorney's office and a grand jury that were limited to handling crimes that occurred at least in part in Brooklyn (Kings County). Every one of the thirty-five police officers charged in the scandal was prosecuted by the Brooklyn district attorney.[91] One defendant (Ptl. Bartholomew Nicastro) was convicted of federal tax evasion charged by the U.S. Attorney for the Eastern District of New York (still Brooklyn) after he faced other charges that the D.A. brought.[92]

All of the thirty-five charged cops were male. It appears that all were white—the *Brooklyn Eagle* printed photographs of many of the defendants. The police department was still virtually all white. Perhaps a slight trace of diversity crept in with some 40 percent of the defendants having identifiable Irish surnames (14 of 35), down substantially from the earlier scandals.

Although prosecutors charged two inspectors (along with naming six others as unindicted co-conspirators), most of the indicted cops came from the patrolman level. Table 6.1 shows the ranks of the defendants.

TABLE 6.1. Ranks of police charged in Gross-era prosecutions

Rank	No. charged	% of total
Inspector	2	6
Captain	1	3
Lieutenant	3	8
Detective	1	3
Sergeant	1	3
Patrolman	27	77
Total	35	100

So, despite prosecutors' attempts to aim at higher-ranking police, the ranks of the defendants were even more bottom heavy than in the earlier scandals because of the large number of charged patrolmen. This was likely because day-to-day enforcement of gambling laws (and the corrupt failure to enforce) largely fell upon plainclothes officers at the patrolman rank.

Breaking down the primary charged conduct against police defendants in this scandal presents issues because several of the defendants who gained dismissals in the big trial were then charged and convicted on other offenses. For those officers, table 6.2. uses the charges of conviction, instead of the charges of dismissal, as their primary charged conduct.

TABLE 6.2. Primary charged conduct in Gross-era prosecutions

Conduct	Cases	% of total
Consp. to obstruct justice	17	49
Perjury	13	37
Contempt	4	11
Tax evasion	1	3
Total	35	100

There were actually twenty-one cops charged with conspiracy to obstruct justice, as described more fully below. Four were subsequently charged and convicted on other charges (three for perjury and one for tax evasion). Charges of bribery/extortion and assault that were common in the earlier scandals were absent. The trend from the Seabury era toward prosecution-friendly (or prosecution-manufactured) perjury charges continued, particularly after the D.A.'s ill-fated overreliance on obstruction of justice charges. As shown in the description below of the prosecution of Captain Workman, the D.A. pursued perjury charges aggressively and in a manner that more modern court decisions would not allow.

The prior police scandals included civilians involved in prostitution, liquor, and gambling violations; later scandals would add drugs to the mix. The only vice of this scandal was gambling. Of the thirty-five charged defendants, thirty-four were clearly alleged to have engaged in conduct in which gambling was the underlying civilian activity, shown in table 6.3. Most were charged in the mega-indictment that alleged Harry Gross's gambling payoffs, and others were charged with perjury or contempt for trying to conceal the nature of assets they held. For instance, Patrolman Antonio Vigorito failed to disclose ownership of a bar and liquor store in Florida on his required financial questionnaire. He bought them using a different name and paid

mostly cash, and Harry Gross had previously named him as receiving gambling payoffs (although he was not charged in the big indictment), so it is reasonable to conclude that he was attempting to conceal payoffs from gambling on his financial questionnaire, although the perjury charge did not include that allegation.[93]

TABLE 6.3. Primary underlying civilian activity in Gross-era prosecutions

Activity	Cases	% of total
Gambling	34	97
Undetermined	1	3
Total	35	100

In the single "undetermined" case, Patrolman John Carey was convicted of perjury for failure to disclose stocks held by his wife on his financial questionnaire.[94] Although he testified before the grand jury that handled the gambling investigation, and his case was assigned to Judge Leibowitz, who presided over so many gambling-based cases, no accounts of the prosecution specifically stated a connection to gambling.

The cases against the thirty-five charged cops were disposed of as shown in table 6.4. As before, defendants subject to multiple prosecutions are counted as convictions if any of the cases against them resulted in convictions.

TABLE 6.4. Dispositions of Gross-era prosecutions

Disposition	Cases	% of total
Guilty at trial	11	32
Guilty plea	5	14
Total convicted	*16*	*46*
Dismissed	16	45
Conviction reversed	1	3
Not guilty at trial[95]	1	3
Defendant suicide	1	3
Total not convicted	*19*	*54*
Total	35	100

Overlooking that the Brooklyn D.A. suffered what may have been the most startling prosecutorial trial defeat in city history, the prosecution had a successful record in winning every case that was left to a jury's decision. The only not guilty verdict resulted from the judge's direction for legal reasons. None of the earlier scandals came close to such success by prosecutors with juries.

Sentences imposed on convicted cops were quite strict, especially considering that many of the charges were misdemeanors and none involved charges of violence.

TABLE. 6.5. Sentences of convicted Gross-era defendants

Sentence	No. of cases
2½ to 5 years	5
0–3 years	2
18 months	1
1 year	3
7 months	1
30 days	2
Suspended	1
Unknown[96]	1
Total	16

The sentences illustrate how the justice system treated allegedly corrupt police both leniently and harshly. On the one hand, dozens of cops (the unindicted co-conspirators in the big case) were never charged because of the legal requirement of corroboration, another cop received a directed verdict of not guilty for the same reason, and eighteen others walked free from their trial after the prosecution's witness balked. On the other hand, prosecutors pursued cops relentlessly with mandatory questionnaires, multiple grand jury appearances, and financial investigations, and judges imposed harsh sentences on those who were finally convicted.

Through the sentencing phase, Judge Leibowitz continued to act aggressively against corrupt cops, seeming to push the limits of judicial impartiality. The five defendants who received sentences of two and a half to five years all stood trial and were convicted of the felony of first-degree perjury. Four of those defendants (Joseph O'Brien, James Reardon, Antonio Vigorito, and Joseph Workman) were sentenced by Judge Leibowitz.[97] Leibowitz lashed out at the defendants' corruption and pushed hard for their cooperation. He stated in court that Officer

O'Brien had received the "lion's share" of Harry Gross's payoff money, sentenced O'Brien to two and a half to five years, but then offered "extreme leniency" if he were to cooperate, along with another week of freedom to think it over.[98] When sentencing former patrolman James Reardon, Judge Leibowitz spoke as if the investigation were his own. Perhaps referring to the previously resigned Commissioner O'Brien and Mayor O'Dwyer, Leibowitz complained that "there is one big fish that escaped, right next to the king fish, but we won't go into that at this time." To advance with the investigation, the judge nearly begged for Reardon's cooperation: "Even at this late moment I am willing to give him an opportunity—one that has been offered on various other occasions and turned down—to name the higher-ups in the department who received graft."[99] Both cops turned down the judge's overtures and accepted their sentences.

The officer who received the sentence of seven months, Vito Romano, had been sentenced earlier by Judge Leibowitz to the more common two and a half to five years, but he agreed to cooperate for a sentence reduction to what amounted to time served.[100] Research found only one trial that included testimony from a cooperating cop (Officer Max Brendler) against a police defendant (the aforementioned James Reardon). Overall, the blue wall of silence stood quite strong in this scandal, despite the efforts of prosecutors and Judge Leibowitz.

The Big Case

After the reluctant Harry Gross agreed to cooperate, D.A. McDonald bet everything on him. The resulting indictment in May 1951 was, despite the rather dull legalese of an indictment, stunning. Every defendant was a cop, twenty-one in all. Every named co-conspirator was a cop, fifty-six in all. Identifying a co-conspirator by name was not necessary for legal purposes, and modern practice frowns on it.[101] McDonald seemed to have three objectives in packaging Harry

Gross–based charges in this way. First, after overcoming fierce resistance from politicians and police in his investigation, he wanted the indictment to spread accusations of police corruption as widely and deeply as possible. By this route, he would educate the public on the extent of corruption, maintain momentum for the investigation, and shake up the police department as much as possible. Second, McDonald likely sought the benefit of what prosecutors may quietly refer to as the "spill-over effect." That is, the trial jurors would hear so much evidence about so many corrupt cops that they would have trouble distinguishing among defendants and would allow incriminating evidence to spill over between defendants. Third, McDonald may have anticipated a limited shelf life to Harry Gross's value as a witness. If prosecutions were broken up into numerous indictments, Gross's testimony might lose effectiveness (or he would lose willingness) after undergoing trial after trial of cross-examinations. Whatever McDonald's motivations, the big case approach that he took risked that the entire prosecution could fail.

Postindictment events moved quickly, particularly with Judge Leibowitz pushing the case. Along with his desire to bring swift justice to corrupt police, Leibowitz wanted to thwart legal efforts to remove him from the case. On June 4, 1951, less than one month after indictment, the case was scheduled for trial. Defendants gathered outside of the courtroom on the sixth floor of the Central Courts Building on Schermerhorn Street in Brooklyn. Defendant Charles Panarella, a retired plainclothes patrolman (all defendants were either retired or suspended), suddenly broke into a run and leaped out of a window. He died after landing on a building extension three floors below. He held a crucifix and took the plunge in view of his eighteen-year-old son and his brother, a police captain. After the body was removed, Judge Leibowitz declared, "This trial will proceed." In fact, Leibowitz simply presided over the selection of a single juror and adjourned the trial until September, apparently because it would be more difficult for a

higher court to remove him from a trial that had already commenced.[102] Panarella's suicide occurred less than a year after Capt. Flynn's. Leibowitz's strategy worked: applications to remove him from the case were denied.[103]

While waiting for the trial to continue, Harry Gross was not in custody, but he was under guard 24/7 by officers from the squad of young cops assigned to the D.A.'s office. He stayed in a hotel for convenience and security as the trial resumed in September 1951. On September 11, just the second day of trial, Gross visited his family on Long Island with the police escorts. The visit seemed perfectly normal as Gross packed extra clothing for the trial and chatted with his wife in the dining room while one of the officers sat in the living room (the other officer having gone out for a meal). Gross excused himself to wash his hands in the kitchen, slipped out the back door, silently coasted his Cadillac down the driveway, and drove away.[104]

McDonald later acknowledged, "Everything hinged on Gross. Without him we had nothing."[105] He feared that Gross would be killed before authorities located him. But a healthy Gross was found just the next afternoon in Atlantic City at—where else?—a race track. He grumbled to police that they interrupted him just when he was about to hit a winning streak.[106] On his return to Brooklyn, Gross claimed that he was ready for the trial and that he simply had become nervous and needed some recreation. McDonald never found evidence that Gross was threatened or otherwise tampered with during his one-day absence, but he certainly believed that was a strong possibility.[107]

When the trial resumed, there were eighteen defendants. The original twenty-one had been reduced by the suicide of Officer Panarella and two other defendants had their cases severed. Patrolman John Gilgan was severed due to illness and, in what seemed more important at the time, Inspector Frederick Hofsaes was severed because Judge Leibowitz had previously

held him in contempt.[108] Harry Gross seemed to be completely on board with supporting the prosecution. On September 18, 1951, he reassured prosecutor Helfand ("Julie, I'm going to give it to them") and then took the witness stand to describe how he dropped out of school and held a number of jobs before becoming involved in the bookmaking business that included paying off police.[109] Gross grew nervous, though, as his testimony came closer to the substance of the charges against the defendants. He identified all eighteen of the defendants, but when Helfand's questions started to require responses that incriminated the defendants, Gross announced that he would answer no more questions. An hour-long huddle with prosecutors revised Gross's position to claiming that he was not feeling well and would return the next day.[110]

Matters only worsened for prosecutors the next day. Instead of seeming nervous and ill, Gross snarled and spit out responses. He refused to answer Helfand's questions, including dozens of questions in which Helfand tried to have Gross acknowledge his prior grand jury testimony. At one point, Gross walked away from the witness stand until court officers forcibly returned him. Judge Leibowitz bellowed, ""I'll give you a thousand years in jail. I'll bury you."[111] Gross already awaited sentencing on his bookmaking guilty pleas; Judge Leibowitz added sixty contempt citations.[112] Finally, D.A. McDonald came to the courtroom and, in tears, moved for dismissal of the charges against the eighteen defendants. The ecstatic defendants celebrated in the court room.[113] The biggest case ever against New York cops was over.[114]

Captain Joseph Workman

The day after dismissal of the big case, McDonald prepared to continue the fight. He told reporters that Brooklyn had been the site of the worst defeat for Americans in the Revolutionary War and that he, like our forefathers, would ultimately win the war.[115] Basically, he pursued two

routes: first, get Gross back on board and find out who "fixed" him; second, bring criminal charges where possible against the cops who enjoyed dismissals in the big case. McDonald was partially successful on the first route because Gross would resume his cooperation and testify at administrative hearings against police, but McDonald never proved any sort of witness tampering relating to Gross. The second route was also partially successful for McDonald. At least four of the defendants who had dismissals in the big case were prosecuted and convicted on other charges.[116] An example was the case against Captain Joseph Workman.

By early 1951, McDonald had developed the major investigative strategy that did not rely on Harry Gross's cooperation. Under a provision of the city charter, all New York City employees were required to testify if called before a grand jury or trial. They could be fired for noncompliance.[117] McDonald drafted a twenty-three-page questionnaire that asked for details about personal finances going back six years. Some five hundred police officers received the questionnaires and were required to fill them out under penalty of job loss or discipline.[118] Some officers received their questionnaires when they were actually summoned before the grand jury. In addition, police officers were required to waive immunity before the grand jury before testifying. That is, they would not receive the otherwise automatic assurance that their testimony could not be used against them. Some legal issues arose over whether officers who were suspended or who had resigned could be subject to all of the coercive requirements.[119]

Captain Joseph Workman joined the NYPD in 1925. He filled out one of D.A. McDonald's questionnaires in January 1951 and he appeared before the grand jury. Within a month, he resigned from the department.[120] By doing so, Workman joined hundreds of officers who resigned because of pressure from the investigation.[121] Officers who retired might have wanted to protect their pensions, felt that prosecutors would be less interested in retired cops, or

hoped to avoid the testimonial requirements applied to city employees. In his questionnaire submitted to the grand jury, among other points, Workman swore that he did not own personal property valued in excess of $500 (approximately $4,500 in today's dollars).[122]

Workman's grand jury testimony sat unused like extra ammunition for prosecutors while he was indicted in May 1951 as one of the twenty-one defendants in the big case. The indictment alleged that Harry Gross met with Workman in 1947 in the captain's office of the 70th Precinct near Ocean Parkway in Brooklyn, where they agreed that Workman would receive one hundred dollars per month for every bookmaking parlor in the precinct. The relationship between the two men was so unusual, and Gross's influence was so widespread, that Workman allegedly asked for Grossman's help in having a particular police officer (one of the co-conspirators) transferred to the plainclothes unit. Perhaps even more unusual was the allegation that Workman asked for Grossman's assistance in getting Workman's daughter admitted to Sweet Brier College in Virginia.[123] In any event, those allegations against Workman were lost in the dismissal of the big case in September 1951.

McDonald quickly turned back to Workman's questionnaire and grand jury testimony. A fourteen-count perjury indictment returned in December 1951 charged that Workman lied to the grand jury when he swore to the accuracy of his questionnaire responses, when his responses overlooked, among other things, $9,430 in jewelry and $5,280 in furs.[124] Workman's lawyer failed to have the indictment dismissed because of supposed deficiencies in how he was sworn for the grand jury and other technical objections.[125] The allegations did not allege corruption, only that Workman actually owned substantially more in personal assets than he swore to. Prosecutors spiced up evidence of what Workman actually owned with testimony from a young woman—a "redhead," according to press headlines. In an example of the niceties of the time, she

was allowed to testify without giving her name in the public record. Instead, she whispered her name to Workman's attorney. The jurors considered her testimony about how Workman paid to furnish her Manhattan apartment and gave her jewelry, and they convicted Workman of two counts of perjury.[126]

Judge Leibowitz offered Workman "every consideration" in sentencing if he were to cooperate with the D.A.'s office.[127] Workman declined the offer. Leibowitz, never one to mince words, criticized Workman as a "Judas Iscariot who has betrayed his trust and a moral leper of the worst kind," and imposed the maximum sentence of two and a half to five years.[128] Workman stayed out on bail until gaining a reversal of the conviction on appeal on June 1, 1953. Several counts of the indictment had been withdrawn by Judge Leibowitz before the case went to the jury, but the jury had already heard evidence relevant to those counts. The Appellate Division decided that some of the evidence was prejudicial to the defendant, particularly noting the evidence about furnishing the girlfriend's apartment.[129]

Workman's second trial began on December 1, 1953. Judge Leibowitz did not preside over the case for reasons explained in neither press accounts nor court opinions. The new judge, Seward Bodine, came on temporary assignment from Seneca County, which is some two hundred miles from Brooklyn. It would seem likely that an assignment judge took the case away from Leibowitz, or Leibowitz recused himself, after the reversal for judicial error and Leibowitz's intemperate remarks about the defendant.[130]

Workman testified at the second trial. At times tearful, he tried to explain his questionnaire and his grand jury testimony with stories that included his wife receiving gifts of jewelry from her wealthy sister and other jewelry being lost to burglars.[131] The new jury convicted Workman of perjury after only three hours of deliberation. Judge Bodine sentenced

Workman to the same two and a half to five years that Leibowitz had imposed, but without the bombastic berating of the defendant.[132] Workman again gained bail pending appeal based on the issue that a chart displayed at trial that listed furs and jewelry had not been accepted into evidence. The Appellate Division upheld the conviction, as did the New York State Court of Appeals.[133] No issues arose about the constitutional propriety of the "perjury trap" set essentially by coercing Workman to answer the questionnaire, waive immunity, and testify before the grand jury. On January 15, 1955, Workman surrendered to be transported to serve his sentence at Sing Sing.[134] He was the highest-ranking police official to be convicted in the scandal. Neither of the inspectors indicted and dismissed in the big case faced other criminal charges.

Conclusions

Although the Gross era was the only cyclical scandal that did not involve an independent investigative commission, some types of outcomes seemed unchanged. In prior scandals, the prosecutors (almost always the Manhattan D.A.) handled the cases that had been directly referred by, or at least reviewed by, the particular commission. Brooklyn D.A. McDonald investigated and developed his own cases that his office prosecuted with neither the assistance nor hindrance of a commission. Yet, despite being in full control of the decision-making process, he still fell victim to the dangers of trying to build a case around a problematic witness. McDonald misplaced his confidence in Harry Gross because Gross was articulate, had an extraordinary memory, and his testimony could have been bolstered by wiretaps and other corroborative evidence to overcome his lack of credibility. Earlier prosecutors in cyclical scandals might have complained about the commissions saddling them with bad trial witnesses, but McDonald picked his witness and ended up with the worst trial experience of any of the prosecutors.

The other cyclical scandals featured the investigative commissions being able to call witnesses for public hearings and ultimately to issue a report that summarized the corruption findings. McDonald's commissionless investigation seemed to strive for similar results. While McDonald called many police officers before the grand jury, their testimony usually remained secret as required by law unless they were indicted on perjury charges. How McDonald drafted the indictment in the big case evaded some of the grand jury secretiveness; the unusual step of naming fifty-six unindicted co-conspirators essentially disclosed that the grand jury had heard evidence of their corruption. The large number and varied ranks of the co-conspirators clearly suggested systemic corruption, which is a big picture often not shown well by the case-by-case approach of criminal prosecutions.

As for the lack of a final commission report, the Brooklyn D.A. tried to make up for that by issuing a 121-page report that summarized most aspects of the investigation from December 1949 to April 1954.[135] As thorough as it might have appeared, however, the report was still a prosecutor's report describing a grand jury investigation, so it lacked the wider perspective of an independent commission. The report and the investigation it described had extraordinary impact on the city and the police department—the mayor and police commissioner resigned, hundreds of cops resigned or were dismissed, hundreds of other cops were transferred, and dozens were prosecuted. But the prosecutor-led investigation did not force administrative reforms in the police department that might avoid the next corruption scandal.

Notes

[1] "The Oldest Established," lyrics and music by Frank Loesser, from *Guys and Dolls* by Jo Swerling and Abe Burrows.

[2] Tertius Chandler, *Four Thousand Years of Urban Growth: An Historical Census* (Lewiston, NY: Edwin Mellen Press, 1987).

[3] Lankevich, *American Metropolis*, 181.

[4] Meyer Berger, "City Sets Up Model-Scale World Capital for U.N.," *New York Times*, October 19, 1946; "Work on U.N. Site Behind Schedule," *New York Times*, November 25, 1948.

[5] Peter Blake, "This Way Up," *New York Magazine*, December 30, 1975, 45.

[6] "Plans for U.N. Site Arouse Tudor City," *New York Times*, July 22, 1948; "Rush Job Extends Area of U.N. Site," *New York Times*, April 23, 1950.

[7] "Building a Great Workshop of Peace," *New York Times*, November 10, 1948.

[8] "Test of Headquarters Subcommittee Report on the U.N. Site," *New York Times*, December 13, 1946.

[9] New York City Department of City Planning, "Total and Foreign-born Population New York City, 1790-2000," http://www.nyc.gov/html/dcp/pdf/census/1790-2000_nyc_total_foreign_birth.pdf (accessed June 13, 2014).

[10] Lankevich, *American Metropolis*, 181.

[11] U.S. Bureau of the Census, "Race and Hispanic Origin for Selected Large Cities and Other Places: Earliest Census to 1990," http://www.census.gov/population/www/documentation/twps0076/NYtab.pdf (accessed June 13, 2014).

[12] Nicholas Pileggi, "Crime at Mid-Century," *New York Magazine*, December 30, 1975.

[13] Pileggi, "Crime at Mid-Century."

[14] Gordon Thompson, "Brooklyn Eagle Revisited in Book," *New York Times*, September 22, 1974.

[15] Attempts to revive the paper in the early 1960s were unsuccessful. Later uses of the name "Brooklyn Eagle" for print or online publications were not associated with the original paper.

[16] "Pulitzer Prize Won by Brooklyn Eagle," *Brooklyn Eagle*, May 8, 1951. In addition to the police corruption aspect, the articles in the *Brooklyn Eagle* focused on organized crime and helped to prompt the famed Kefauver Committee hearings in the U.S. Senate. Less than one month after the *Brooklyn Eagle* articles began, Senator Estes Kefauver of Tennessee introduced a resolution to create the committee that would present mob figures such as Frank Costello and

Myer Lansky to the American public in televised hearings. Kefauver used his national stature from the hearings to seek the Democratic presidential nomination in 1952 and 1956.

[17] Ed Reid, "Lucrative Borough Rackets Feed Vast Crime Syndicate," *Brooklyn Eagle*, December 11, 1949. Reid later wrote, "I Broke the Brooklyn Graft Scandal," published in *True*, a so-called men's magazine of the time. That story was adapted into the low-budget movie *The Case Against Brooklyn* (1958), starring Darren McGavin as a rookie cop who goes undercover to investigates bookies who are paying off police.

[18] Raymond A. Schroth, "The Brooklyn Eagle, 1841–1955: What Have We Lost?" (lecture, Brooklyn College Library, March 15, 2005).

[19] The term "Cosa Nostra" was not in common usage at the time.

[20] Ed Reid, "Gamblers Infest Schools, Prey on Kids' Lunch Monies," *Brooklyn Eagle*, December 14, 1949. Highly-publicized Congressional hearings would take up both comic books and communism.

[21] Dewey was appointed as a special prosecutor for the State of New York and obtained a conviction against Luciano in 1936.

[22] Ed Reid, "Lucrative Borough Rackets Feed Vast Crime Syndicate," *Brooklyn Eagle*, December 11, 1949.

[23] Ed Reid, "Policy Bosses Prey on Rich and Poor Alike," *Brooklyn Eagle*, December 19, 1949.

[24] "Monaghan Sifts Rifkind's Rap at Cops," *Brooklyn Eagle*, December 28, 1951

[25] Ed Reid, "Police Inspectors Get Paid Off, Bookie Charges," *Brooklyn Eagle*, December 15, 1949.

[26] Mockridge and Prall, *The Big Fix*, 131–133.

[27] "Gambling Inquiry Set for Brooklyn," *New York Times*, December 23, 1949.

[28] Samuel Leibowitz defended cops charged in Seabury-era prosecutions and was even under indictment himself, briefly, for subornation of perjury in those cases. At the time, he complained strenuously about "how unjust and unfair it is to permit stool pigeons and gutter rats to besmirch decent men's reputations," seemingly in contrast to his stern judicial positions of the Gross era. "Leibowitz Indicted in Police Case Inquiry," *New York Times*, September 30, 1931. The highlight of his extraordinary legal career came in winning the appeal before the United States Supreme Court that overturned the death sentences for the so-called Scottsboro Boys in 1935.

[29] "Pulitzer Prize Won by Brooklyn Eagle," *Brooklyn Eagle*, May 8, 1951.

[30] "Three High Ex-Cops, 18 Others Indicted," *Brooklyn Eagle*, May 9, 1951.

[31] The primary investigative response was by a prosecutor, rather than by an appointed commission as in the other cyclical scandals, so the sections on the response and the prosecutors have been combined.

[32] Joan Cook, "Miles F. McDonald, 85, Ex-Judge and Brooklyn District Attorney," *New York Times*, August 5, 1991.

[33] The changing demographics of Brooklyn led to the closing of St. John's Prep in 1972. Much later, it would reopen in Queens under a merger with another Catholic school.

[34] Mockridge and Prall, *The Big Fix*, 41. As mayor, O'Dwyer would stand on the steps of city hall, look toward the Woolworth Building, and proudly proclaim that he had helped build what was the tallest building in the world.

[35] McLandish Phillips, "O'Dwyer Funeral Attended by 1,700," *New York Times*, November 28, 1964.

[36] "O'Dwyer to Retain Staff," *New York Times*, November 6, 1943.

[37] "McDonald Is Sworn in as U.S. Attorney Here," *Brooklyn Eagle*, May 17, 1945.

[38] "Dewey Names Beldock Boro Prosecutor," *Brooklyn Eagle*, August 9, 1945.

[39] The prosecution's case against Anastasia weakened after cooperating witness Abe "Kid Twist" Reles died suspiciously after a fall from a window of a Coney Island hotel where he was supposed to be under police protection. Anastasia would be shot to death in 1957 in the barber shop of the Park Central Hotel, the same hotel where Arnold Rothstein was killed in 1928. Anastasia's barber chair is now on display in the Mob Museum in Las Vegas.

[40] Grand juries in most jurisdictions are permitted to issue reports of findings, sometimes called presentments. A presentment is not an indictment, the far more common legal instrument returned by a grand jury.

[41] "O'Dwyer Camp Hits Back at Grand Jury," *Brooklyn Eagle*, October 30, 1945.

[42] "Abstract of Beldock Jury's Presentation," *Brooklyn Eagle*, October 30, 1945.

[43] "O'Dwyer and Beldock Speeches Defending and Attacking his Record as Prosecutor," *New York Times*, October 31, 1945.

[44] Walter Gunnison, "McDonald Tops Beldock for D.A. Post," *Brooklyn Eagle*, November 7, 1945.

[45] Walter Gunnison, "McDonald Tops Beldock for D.A. Post," *Brooklyn Eagle*, November 7, 1945.

[46] "Seek Further Probe of O'Dwyer Charges," *Brooklyn Eagle*, December 21, 1945; "26 of Staff Named by Kings Attorney," *New York Times*, January 1, 1946.

[47] "Kings Special Jury Accepts M'Donald," *New York Times*, January 4, 1946.

[48] "2 of Jury Charges on O'Dwyer Voided," *New York Times*, February 7, 1946; "New O'Dwyer Jury Refused by Dewey," *New York Times*, April 7, 1946.

[49] "Morris Sees City Run by Costello," *New York Times*, October 4, 1949.

[50] "124 'Bookie' Places Listed by Morris," *New York Times*, October 19, 1949.

[51] Ibid.

[52] "Foley Scores Morris Over Costello Issue," *New York Times*, October 17, 1949.

[53] "McDonald Tallies 444,255 as Boro's Champ Vote Getter," Brooklyn *Eagle*, November 9, 1949.

[54] Violet Brown, "Racket-Buster McDonald 'a Moralist With a Smile,'" *Brooklyn Eagle*, October 12, 1950.

[55] Harold Harris, "Probers Pry into Bookies Charmed Lives," *Brooklyn Eagle*, March 6, 1951.

[56] Edward Silver, Report of Special Investigation by the District Attorney of Kings County and the December 1949 Grand Jury, December 1949 to April 1954 (1955). See also Chin, New York City Police Corruption Investigation Commissions.

[57] Ronald Smothers, "Julius Helfand Is Dead at 84; Led New York Boxing Inquiry," *New York Times*, August 18, 1987.

[58] Silver, *Report of Special Investigation*, 7–8; Mockridge and Prall, *The Big Fix*, 140–141.

[59] Ibid., 141–143.

[60] Ibid., 175–178.

[61] Silver, Report of Special Investigation, 11–13.

[62] "Plan Hero's Rites for Slain Officer," *Brooklyn Eagle*, July 22, 1950.

[63] "Widow Says Probers 'Hounded' Capt. Flynn," *Brooklyn Eagle*, July 19, 1950.

[64] Mockridge and Prall, *The Big Fix*, 182–185.

[65] Arm, *Pay-Off*, 47.

[66] "Text of the Grand Jury's Report," *New York Times*, August 17, 1950.

[67] Ed Reid, "Racket Probers Rack Up Four Convictions," *Brooklyn Eagle*, May 28, 1950.

[68] "Racket Probers Press Inquiry," *Brooklyn Eagle*, July 29, 1950. The directed verdict of acquittal resulted from the statutory requirement of independent corroboration for a perjury charge.

[69] James Haggerty, "O'Dwyer Reported After Envoy Post," *New York Times*, July 14, 1950.

[70] Alexander Feinberg, "Truman 'Sold' Job to Him, Mayor Says," *New York Times*, August 16, 1950.

[71] "O'Dwyer Defends Kings Jury Fight," *New York Times*, August 22, 1950.

[72] Paul Crowell, "Mayor to Bid City 'Farewell' Today," *New York Times*, August 31, 1950.

[73] Silver, Report of Special Investigation, 18–19.

[74] Ed Reid, "Say $4,000,000 Protection Paid to Cops in One Year," *Brooklyn Eagle*, September 16, 1950. Gross maintained a suite at the Towers Hotel on Clark Street in Brooklyn Heights. The building later became a residence hall for the Jehovah's Witnesses. The religious organization sold the property and others in Brooklyn to take advantage of a favorable real estate market. Lore Croghan, "No longer 'Vatican City' for Watchtower, Brooklyn watches Jehovahs retreat," *Brooklyn Daily Eagle*, October 9, 2013.

[75] The outspoken Leibowitz gave strong testimony about organized crime and police corruption in New York before the Kefauver Committee. "O'Dwyer Gives Lie to Crane Charge," *New York Times*, March 27, 1951.

[76] Ed Reid, "Say $4,000,000 Protection Paid to Cops in One Year," *Brooklyn Eagle*, September 16, 1950.

[77] Alexander Feinberg, "Bookmakers and Police: New York's Big Scandal," *New York Times*, September 24, 1950.

[78] Alexander Feinberg, "Bookie Chief Held in Bail of $250,000; 24 Hour Guard Set," *New York Times*, September 20, 1950.

[79] Milton Honig, "2 Needed to Carry Gross 'Ice' Money," *New York Times*, January 23, 1951.

[80] "Bookie Gross' Bail Cut to $25,000; Worries Over Crime Inquiry Call," *New York Times*, March 16, 1951.

[81] "Feld Found Guilty on Perjury Count," *New York Times*, March 20, 1951.

[82] Silver, Report of Special Investigation, 32.

[83] Milton Honig, "77 Policemen Cited by Jury in Bet Racket," *New York Times*, May 10, 1951.

[84] "Racket Probe Will Yield Lasting Reform: Helfand," *Brooklyn Eagle*, November 9, 1951.

[85] Ed Reid, "Bare Bookie Dive Whitewash—DA Seizes 16th Division Police Books," *Brooklyn Eagle*, May 11, 1950.

[86] Silver, Report of Special Investigation, 71.

[87] Ed Reid, "Probers Seen Sifting Cops' Bank Accounts; New Shakeup Hinted," *Brooklyn Eagle*, April 23, 1950.

[88] Ed Reid, "Wife of Ill Inspector Quizzed on His Finances," *Brooklyn Eagle*, May, 17, 1950.

[89] "More D.A.'s Issue Questionnaires à la McDonald," *Brooklyn Eagle*, June 5, 1951.

[90] Ed Reid, "D.A. Clamps Jail Crusher on Gross to Bare Bribers," *Brooklyn Eagle*, September 20, 1951.

[91] In June 1953, a state prosecutor charged several cops or former cops in Staten Island related to payoffs from gamblers. Those charges are not included as scandal-related prosecutions because of the separation in time from the inception of the Brooklyn scandal. "Ex-Police Officer in Indicted Group," *New York Times*, June 2, 1953.

[92] "Tax Evasion Admitted," *New York Times*, April 19, 1955.

[93] "Ex-Policeman Is Guilty," *New York Times*, January 23, 1953.

[94] "Ex-Cop Gets 2½–5 for Lying to Jury," *Brooklyn Eagle*, February 16, 1953; "Ex-Cop Gets 3 Years to Study Leibowitz Label as Crook."

[95] As noted earlier, the jury in the trial of Lt. James Reilly was directed by the judge to return a verdict of not guilty.

[96] Ptl. John J. Keane was the last person indicted by the 1949 extended grand jury. During his trial in October 1954, he pleaded guilty before Judge Leibowitz and admitted that he had committed perjury when he lied in his grand jury testimony about paying $13,000 cash obtained from pay-offs to buy his home. No record of his sentencing could be located.

[97] "Ex-Policeman Gets Prison for Perjury," *New York Times*, March 13, 1952; "Reardon Sentenced to 2½ to 5 Years," *New York Times*, September 3, 1952; "Ex-Policeman Gets 2½ Years in Prison," *New York Times*, February 17, 1953; "Ex-Capt. Workman Gets 2½ to 5 Years,"

New York Times, April 19, 1952. Capt. Workman had his conviction reversed on appeal, then was convicted on retrial and sentenced to the same two and a half to five years by another judge.

[98] "Ex-Policeman Gets Prison for Perjury," *New York Times*, March 13, 1952.

[99] "Reardon Sentenced to 2½ to 5 Years," *New York Times,* September 3, 1952.

[100] "Ex-Policeman Gets Perjury Sentence," *New York Times,* September 22, 1952.

[101] The Department of Justice's *United States Attorneys' Manual* advises that federal prosecutors "generally should not identify unindicted co-conspirators in conspiracy indictments." USAM 9-11.130. Available at http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/11mcrm.htm#9-11.130.

[102] Charles Grutzner, "Policeman Suicide at Gambling Trial," *New York Times,* June 5, 1951; "Ex-Cop Facing Racket Trial Leaps to Death from Court," *Brooklyn Eagle*, June 4, 1951; "3 Bookies Lose Out in Bids to Beat Jail," *Brooklyn Eagle,* June 5, 1951.

[103] Arm, *Pay-off*, 213–214.

[104] Mockridge and Prall, *The Big Fix,* 285–286.

[105] Ibid., 287.

[106] Ibid., 296.

[107] See Silver, Report of Special Investigation, 46–47.

[108] Arm, *Pay-off*, 211.

[109] Ed Reid, "McDonald a Step from 'Mr. Big' when Syndicate Gagged Gross," *Brooklyn Eagle,* September 23, 1951.

[110] Mockridge and Prall, *The Big Fix*, 299–300.

[111] Ed Reid and I. Kaufman, "Gross Screams, Bolts Stand, Is Forced Back," *Brooklyn Eagle*, September 19, 1951.

[112] Harry Gross left prison in New York in 1958, moved to California, and continued to have run-ins with the law. He committed suicide in 1986 at his modest home in Long Beach, California weeks after his arrest on drug charges. Robert McFadden, "The Lonely Death of a Man Who Made a Scandal," *New York Times*, April 5, 1986.

[113] Mockridge and Prall, *The Big Fix*, 303–304.

[114] The cases against the previously severed defendants were later dismissed as well.

[115] Mockridge and Prall, *The Big Fix*, 305.

[116] Edmund Duncan, Bartholomew Nicastro, Joseph O'Brien, and Joseph Workman.

[117] "Cops Defy Rifkind, Hint Court Test," *Brooklyn Eagle*, November 24, 1951.

[118] Ed Reid, "D.A. Clamps Jail Crusher on Gross to Bare Bribers," *Brooklyn Eagle*, September 20, 1951.

[119] "Ex-Police Official Snubs Gaming Jury," *New York Times*, January 25, 1951. See, e.g., In the Matter of Emanuel Berson, Petitioner, v. Louis Goldstein, as a Judge of the Kings County Court, et al., 207 Misc. 811 (Kings County, 1953).

[120] "Retired Police Captain, Indicted for Perjury in Financial Questionnaire, Freed in Bail," *New York Times*, December 14, 1951.

[121] Gabriel Chin, introduction to volume IV, *New York City Police Corruption Investigation Commissions, 1894-1994* (1997, Buffalo, NY: Hein), ix.

[122] Inflation calculator available at http://www.westegg.com/inflation/infl.cgi.

[123] See Silver, Report of Special Investigation, 41.

[124] "Retired Police Captain, Indicted for Perjury in Financial Questionnaire, Freed in Bail," *New York Times*, December 14, 1951.

[125] "Capt. Workman Fights Validity of Indictment," *Brooklyn Eagle*, March 2, 1952.

[126] "Redhead Tells Jury of Workman Gifts," *Brooklyn Eagle*, March 19, 1952.

[127] "Workman Guilty of Perjury," *Brooklyn Eagle*, March 22, 1952.

[128] "Workman Fined $5,000, Gets Jail Term of 2½ to 5 Years," *Brooklyn Eagle*, April 18, 1952.

[129] People v. Workman, 282 App. Div. 703 (2d Dept, 1953).

[130] "Begin 2d Trial of Ex-Police Capt.," *Brooklyn Eagle*, December 1, 1953.

[131] "Ex-Cop Awaits Appellate Rule in Second Perjury Conviction," *Brooklyn Eagle*, May 4, 1954.

[132] "Workman Gets 2½ to 5 Years For Bookie Probe Perjury," *Brooklyn Eagle*, February 15, 1954.

[133] People v. Workman, 308 N.Y. 668 (1954); People v. Workman, 283 App. Div. 1066 (2d. Dept. 1954).

[134] "Workman Gives Up on Perjury Rap," *Brooklyn Eagle*, January 15, 1955.

[135] Miles McDonald had become a judge by the time the report was issued, so the report was issued under the name of Brooklyn D.A. Edward Silver. As mentioned previously, some observers call it the Helfand Report because of the prominent role of Assistant D.A. Julius Helfand. Helfand received his appointment to head the New York State Boxing Commission shortly after the issuance of the report.

Chapter 7

The Knapp Commission–Era Scandal

It's one thing to accuse a policeman of corruption, and another thing to prove it.
—Edward Kiernan, president of the Patrolmen's Benevolent Association,
commenting on early published allegations of police corruption in 1970[1]

By 1970, New York City had already skidded down much of the "long slide" described by George Lankevich.[2] The *Brooklyn Eagle*, famed for triggering the previous police scandal, suspended publication because of a strike by workers in January 1955, and then closed completely a few months later. The New York Giants and the Brooklyn Dodgers of professional baseball's National League deserted the city in 1957. Pennsylvania Station, one of the most admired buildings in America, was demolished in 1963. The city's one million manufacturing jobs in 1950, already down from wartime levels, plummeted by 50 percent in the next twenty years.[3] The city looked down-and-out. Columnist Murray Kempton observed, "The faces of New York remind me of people who played a game and lost."[4]

Perhaps, the city's decline gave the electorate a perception of less leeway for public corruption, and the city's top political officials seemed to become more professional and fit for office. Vincent Impellitteri served ably as mayor, although for only one elected term. Impellitteri's position as city council president made him acting mayor in 1950 following William O'Dwyer's resignation in the last police scandal, and then he won election as a third-party candidate later that same year. In 1950 Tammany Hall had a new boss in Carmine DeSapio, who tried to help the aging political organization maintain power by inching away from its corruption-soaked and mob-influenced roots. Tammany successfully sponsored Robert Wagner, Jr. as the Democratic candidate for mayor in 1953. Wagner served three terms largely

untainted by scandal, perhaps made easier because all of his terms fell between the cyclical police scandals that had undermined several of his predecessors. Tammany's move toward somewhat better government, however, did not prevent its loss of power. In 1961, Mayor Wagner felt sufficiently emboldened in his reelection campaign to openly break with DeSapio and Tammany. DeSapio went on to lose to reformer Ed Koch for the leadership position in DeSapio's home district of Greenwich Village. By the time of the next police scandal, the political landscape had shifted so much that city voters no longer had the option to vote Tammany out of office.

The city had changed in extraordinary ways when Mayor Wagner declined to run for a fourth term in 1965. While Wagner was in office, some eight hundred thousand non-Hispanic white residents left the city.[5] The housing they left behind largely turned over to black and Puerto Rican residents; the McCarran-Walter Act of 1952 continued quotas that restricted immigration that might have opened the city more widely to other populations. The city's difficult transformation strained fiscal resources and sparked racial tensions among residents over school desegregation and other issues. Set off by the fatal police shooting of an African American youngster in July 1964, Harlem became the scene of America's first major urban riot of the 1960s. Although Los Angeles, Cleveland, Newark, and other cities would later have much larger disturbances, the summer of 1964 in Harlem showed that New York was susceptible to the urban "long, hot summer" like any American city. Fears of more civil disturbances led some city officials to take no action on allegations of police corruption because a corruption investigation might alienate the police department, the city's line of defense.[6]

Hollywood recognized the appeal of New York's deterioration. The film *Death Wish* depicted a dangerous city in which feral criminals committed atrocities that drove a businessman

to a vigilante rampage.[7] Closer to the scandal, the story of one of the whistle-blower cops became the movie *Serpico*. The dirty and chaotic city shown in the film was a fitting home for the story's corrupt police department.[8] Even the lighthearted comedy *The Out-of-Towners* built its humor on the city being so out of control that it could deliver neither basic services nor personal safety.[9]

While the nearly all-white police force fumbled in handling race relations, the department seemed unable to face the challenges of the changing city on multiple fronts. An epidemic of heroin use hit the city's minority residents in the 1960s.[10] Crime soared. The 390 recorded homicides in New York City in 1960 climbed to 1,444 in 1970, the year that the police scandal broke.[11] The massive scandal painted the police as corrupt, in addition to the unmistakable indicators of residential flight and crime increases suggesting the department's ineffectiveness in protecting the city. The city's fiscal crisis of the mid-1970s caused layoffs of thousands of police, and cops took to the streets in disruptive protests that did little to enhance the image of their order-keeping function. With the cyclical scandal and its aftermath, the NYPD hit the low point of its history.

The Triggering Event

Lardner and Repetto assert that a "chance meeting" between two young cops in 1966 "set the process in motion" for the 1970s police scandal.[12] The cops were David Durk and Frank Serpico, and they met when both were assigned in January 1966 to a training program at the police academy. While Lardner and Repetto are correct that the Durk-Serpico meeting set a process in motion, the true triggering event (more consistent with Parkhurst's sermon,

Rosenthal's murder, Rothstein's murder, and the *Brooklyn Eagle*'s exposé) would not occur until April 1970.

David Durk did not fit the stereotypes of a New York cop. He was Jewish, the son of a Manhattan doctor, and educated at the highly selective Stuyvesant High School and graduated from Amherst College. After a year of Columbia Law School, he joined the police department in 1963. His productive police work and education allowed him to rise in the ranks of the department, but his refusal to accept payoffs cast him as an outsider and he was shuttled between assignments by untrusting superiors. By early 1966, the assignment shuffle took Durk to plainclothes training and his encounter with Frank Serpico.[13]

Although Serpico cultivated the image of the eccentric outsider, his background in coming to the police department was quite conventional. He grew up in a working-class Italian American family in Brooklyn and graduated from a Catholic high school before enlisting for service with the army in Korea. He picked up some credits at Brooklyn College and did private security work before joining the police department in 1959. Serpico's first assignment at a precinct in Brooklyn exposed him to lower-level police corruption: free lunches from delis, free liquor from bars, bribe offers from motorists, and sleeping on the job. His transfer to plainclothes duty in January 1966 led to his fuller immersion in exotic undercover disguises and an unconventional lifestyle and to his exposure to more serious police corruption.[14]

Peter Maas's biography *Serpico* described the interaction between Durk and Serpico, although the relationship was essentially stricken from the movie adaptation, perhaps for narrative purposes. In contrast to the scruffy, excitable Serpico, the conservatively dressed Durk was smooth and articulate. Durk also had political connections that might have aided his rise in the department. In particular, Durk developed a friendship with Jay Kriegel, a fellow Amherst

alumnus and a high-ranking advisor to Mayor John Lindsey. Durk also gained a desirable assignment to the city's Department of Investigation. After Serpico received an unwanted cash payoff in 1966, he was optimistic that contacting Durk would begin productive steps against the police corruption that both men abhorred. Both were disappointed, however, when a captain in the Department of Investigation declined to start an investigation and instead advised Serpico to forget about the payoff.[15] Their meeting with Arnold Fraiman, commissioner of the Department of Investigation, was similarly unproductive, apparently through a combination of Fraiman's reluctance to rock political boats and his belief that Serpico was, at best, unreliable.[16]

When Durk tried to play his city-hall card, the results were even more frustrating. His friend Jay Kriegel, who had become Mayor Lindsay's chief of staff, met with both Durk and Serpico in 1967. Kriegel initially voiced support for taking anticorruption steps, but then expressed concerns about alienating the police department. Mayor Lindsay's national reputation depended on keeping New York riot free—the Harlem disturbance in 1964 had not occurred on Lindsay's watch. Roiling the police department might upset New York's remaining levels of urban peace. Kriegel strung Durk along for a couple of years with no action from the mayor's office.[17] When John Lindsay died in 2010, the ever-loyal Kriegel wrote glowingly of Lindsay's success in avoiding a major riot in New York, and of how Lindsay took steps toward a civilian review board and reducing police use of force, but he omitted any mention of the police corruption scandal that exploded under Lindsay.[18]

Serpico did manage to attract some limited investigative and prosecutorial attention to his complaints of corruption in the 7th Division in the South Bronx. The circumstances highlighted the difficulties that many people had in dealing with Serpico. Further, the circumstances showed

the importance of the triggering event in the broader scandal because the Serpico-based 7th Division cases might have come and gone like countless other small cases of police corruption.

In Serpico's vice-related undercover work he declined his share of payoffs, but he did not want to inform on the cops he worked with. He had an informal conversation with the rackets chief of the Bronx D.A.'s office and contacted a police captain whom he believed to be honest. The plodding, reluctant anticorruption mechanisms of the police department began to move, slightly. Serpico gave information about the corruption of his street-level partners, although he pleaded for an investigation into the corruption of higher-ups in the department. At police headquarters, the first deputy commissioner heard some of the allegations and decided that the investigation should stay in the Bronx rather than expanding.[19] Serpico finally met with Burton Roberts, the aggressive and blustery Bronx district attorney. Serpico and Roberts grated on each other. Serpico complained that only "flunky cops" were targeted and balked at fully cooperating, but he finally testified before a Bronx grand jury in June 1968.[20] Roberts put cops before the grand jury under grants of limited immunity, asked questions about gambling enforcement, and ultimately charged eight cops of the 7th Division with perjury in June 1969.[21] The underlying activity of the charged cops was essentially the same that Serpico had previously reported to the uninterested Commissioner Fraiman of the Department of Investigation. The cases garnered minor headlines and most of the prosecutions were unsuccessful. D.A. Roberts blamed Serpico.[22]

With no citywide jurisdiction, no investigative commission, and no significant exposure of wider corruption, the Bronx prosecutions of the 7th Division cases might have been the extent of the police scandal if Durk had not pursued one last option. He maintained some contact with reporters from the *New York Times* and increased the contact with David Burnham, the new police reporter for the newspaper. Durk regularly met with Burnham for months, spent days at

Burnham's desk at the *Times*, and tried to urge exposure of higher-level corruption. But the Grey Lady seemed hesitant to walk down the street of gritty investigative reporting, particularly where the results might reflect badly on the favored Mayor Lindsay. Finally, Durk reassured *Times* editors with a corruption show-and-tell from six persons: himself, Serpico, Inspector Paul Delise, and three other cops who have remained anonymous.[23] The *Times* decided to go with the story.

Burnham's page 1 story ("Graft Paid to Police Here Said to Run into Millions") ran on Saturday, April 25, 1970.[24] Robert Daley wrote that the story was "like a basketball dropped from a great height" because it kept bouncing and bouncing, that is, having continued effects on the city, public officials, and the police department.[25] The story criticized Fraiman, Kriegel, and others previously contacted by Serpico for inaction when they received reports of corruption. Burnham wrote of corruption "woven into the very fabric of the policemen's professional life" and described well-organized gambling-related payoffs and less structured narcotics-based payoffs. In addition, payoffs from bodegas, construction companies, and liquor venues were routine. Although no sources were named in the story, many of the allegations were quite specific. Over a year later, in perhaps the most fitting recognition of Burnham's story as the triggering event, the first words of the body of the Knapp Commission Report were, "On April 25, 1970, *The New York Times* printed a story presenting lengthy and detailed accusations of widespread corruption in the Police Department."[26]

The Response

There was no doubt that NYPD corruption in 1970 was headed to a commission-level investigation due to the prominence of the *New York Times* and the distressing nature of the corruption allegations. In addition, Mayor Lindsey was not beholden to a political machine that

he needed to protect and keeping his head in the sand about police corruption no longer served the city or his presidential ambitions. Mayor Lindsay had learned in advance of Burnham's pending exposé. In an obvious attempt to take some sting out of the allegations, Lindsay appointed the Rankin Committee just two days ahead of the story. Lee Rankin, corporation counsel for the city, headed the committee. Other members included police commissioner Howard Leary, Bronx D.A. Roberts, and Manhattan D.A. Frank Hogan. Lindsay initially stuck with this in-house investigative approach despite serious criticism. Rankin tried to defend the decision by claiming that an outside, independent commission would lack needed expertise. After the first meeting of his committee, he stated, "I don't think that an outside committee, having no familiarity (with the problem) could do the work with the same skill and effect required of us."[27] State Attorney General Louis Lefkowitz publicly agreed with Rankin and stated that the committee was "a panel of outstanding people who I am sure will do a thorough job."[28] A couple of weeks after the committee's formation, Lindsay optimistically claimed that he looked forward to the committee's first report.[29]

Lindsay seriously miscalculated in his attempt to head off the scandal with the preemptive appointment of the committee. A growing chorus of public officials called for a stronger response to the allegations in reporter Burnham's stories.[30] On May 14, 1970, after holding four meetings in its three-week existence, the Rankin Committee sent a long public letter to the mayor. The committee made some sensible recommendations, such as changes in the pension rights for cops under investigation and the manner in which cops might report corrupt activities without reprisals. The existing business-as-usual in the city's administration of police must have been to avoid attempting reforms because those sensible recommendations seemed easy to produce when the pressure turned up a bit. In any event, the real bombshell in the May 14

letter was that the Rankin Committee declared itself inadequate to tackle police corruption and recommended that Mayor Lindsay disband the committee.[31]

The fledgling committee's exit was certainly no surprise to the mayor. Police Commissioner Leary did not even attend what would the committee's last meeting as he had become the most obvious example of the conflicts of interest in the committee. Word leaked from city hall that the mayor would appoint a different body to investigate police corruption.[32] Congressman Ed Koch urged that Lindsay support the appointment of a state-wide commission by Governor Nelson Rockefeller to examine police corruption.[33] Instead, just as he did a month earlier, Lindsay used an executive order to appoint a five-member investigative panel. He did pursue two important changes to address critics: first, appointees would serve on a full-time basis in order to devote enough attention to their task and second, appointees would not be law enforcement officials to avoid conflicts of interest.[34] The blue-blooded mayor did not need to descend down the social ladder to find his commission chairman. Percy Whitman Knapp (he stopped using his first name before college) was listed in the Social Register and collected his education at the Dwight School, Choate, Yale, and Harvard.[35] Although he lived in Greenwich Village, he managed to pursue his favorite sports of skiing and horseback riding.[36]

The formal name of what became known as the Knapp Commission was the Commission to Investigate Allegations of Police Corruption and the City's Anti-Corruption Procedures. Joining Chairman Knapp as commissioners were attorneys Arnold Bauman, Franklin Thomas, and Cyrus Vance. The only nonattorney was Joseph Monserrat of the city's board of education. Thomas, an African American, and Monserrat, who was Hispanic, added what was considered diversity at the time for the all-male commission. At the mayor's request, the city council later granted subpoena power to the commission, and the Board of Estimate provided funding.[37] The

commission successfully fended off a challenge to its legality filed, predictably, by the Patrolmen's Benevolent Association.[38]

Knapp did not let his well-mannered upbringing stop him from occasionally stepping on toes. At an unplanned session with reporters on July 30, 1970, just minutes after Knapp and the other commissioners were sworn in at the mayor's office, Knapp opined that his commission would do a better job of investigating the police than the city's district attorneys. He explained that the district attorneys relied on the NYPD on a day-to-day basis, and that this reliance was an "inhibitive factor" that disrupted investigations of police.[39] As true as that observation might have been, the district attorneys bristled. Knapp's comments appeared to have been impromptu, but he scarcely could have planned a better way to wave a red flag in front of the prosecutors. The district attorneys would soon go on a binge of prosecuting cops to an extent never seen before or since in the city.

Knapp made some key decisions early in the process. First, he hired Michael Armstrong as chief counsel for the commission. Armstrong had a prosecutorial background that included directing complex investigations as the head of the fraud unit in the United States Attorney's Office for the Southern District of New York. Second, Knapp hired about one dozen field investigators, most of whom had experience as federal investigators. These positions would allow the commission to engage in proactive investigations, rather than just reviewing police reports and escorting witnesses to hearings, and drawing staff from outside of the NYPD gave the investigation greater independence. The commission's single investigator with an NYPD patrol background resigned soon after being hired.[40]

The Knapp Commission was not the only anticorruption response stirred by the triggering event. The city's somnambulant Department of Investigation gained some vigor with the 1969

appointment of Robert Ruskin to replace Arnold Fraiman, the commissioner who had ignored Frank Serpico.[41] While the Knapp Commission was still ramping up in August 1970, Ruskin moved aggressively against three cops believed to be extorting money from midtown businesses. When the cops gave evasive responses to questioning by the Department of Investigation, Ruskin moved to have them held in civil contempt. The court rebuffed Ruskin's efforts, however, because the Department of Investigation lacked authority to grant immunity to the cops, so the contempt proceeding violated the officers' Fifth Amendment rights.[42]

Even the NYPD tried to at least give the appearance of moving aggressively against police misconduct. In August 1970, as part of an investigation into whether a police detective sold confidential information to private parties, the Department of Investigation forwarded a memo to the NYPD with a list of officers who appeared to be employed by a private security company. Embattled NYPD Commissioner Howard Leary moved quickly. Seventeen cops, including one captain and several detectives, were reassigned or demoted as they were brought up on departmental charges for failing to obtain permission to hold off-duty jobs.[43] As Leary tried to show that the NYPD could clean its own house, he complained bitterly that the Knapp Commission would become a McCarthyesque smear campaign against the department.[44]

In early September 1970, while the Knapp Commission was still getting off the ground, Leary quit his post as police commissioner. He never submitted a letter of resignation; he simply stopped showing up. As reports of his resignation leaked out, the NYPD was silent because Leary was gone and nobody had been authorized to act as the commissioner.[45] Leary's four years as commissioner were turbulent, marked by crime increases, synagogue bombings, sniper attacks on police, police dissention and demonstrations, civilian review board controversies, and even the bombing of police headquarters.[46] With the Knapp Commission looming, Leary's quasi-

resignation may have signaled that he had simply had enough. His bitterness showed when he tried to dodge subpoena service and then gave grudging, unhelpful testimony to the commission.[47] He later became a criminal justice professor in New Jersey.[48]

The Knapp Commission's revealing investigations, dramatic hearings, and impactful report might have given an impression of the commission as a powerful machine that methodically plowed through all issues of police corruption. In fact, the commission's very existence was touch-and-go at times, its investigations struggled, and presenting compelling live witnesses was difficult. Commission counsel Michael Armstrong recalled his early frustration as investigative efforts mostly turned up only minor offenses. Commission attorney Nick Scoppetta cultivated the important cooperation of Detective Robert Leuci (later the title character of the book and movie *Prince of the City*), but federal prosecutors wanted to keep Leuci working undercover instead of testifying in public hearings.[49] The commission gained the cooperation of a cop caught red-handed taking a payoff, but he so deteriorated under the pressure of the situation that the commission decided he was unusable at public hearings.[50] The commission's initial funding and subpoena authority only extended to the end of 1970, and the combination of budget restraints and underlying political opposition made continued city funding unlikely. Mayor Lindsay was so confident of the short life of the commission that when he filled the vacant police commissioner position he assured candidate Patrick Murphy, "By the New Year, you won't have it looking over your shoulder."[51]

Mayor Lindsay swore in Murphy as police commissioner on October 9, 1970, about one month after the quasi-resignation of Howard Leary, who did not attend the swearing-in of his successor.[52] Murphy later described a disturbing connection between on-going police corruption and the sporadic criminal prosecutions of police in the 1960s. He concluded that police

corruption had continued largely because the department declined to address it administratively. He placed much of the blame at the doorstep of John Walsh, the long-serving first deputy police commissioner. Rather than tackling administrative reforms that might have directly attacked corruption, Walsh would occasionally feed corruption cases to be prosecuted by Manhattan D.A. Frank Hogan. Murphy credited Walsh with high personal integrity, and praised Hogan for his willingness to prosecute cops, but Murphy saw the relationship as one that empowered Walsh for "striking at a small, unpredictable fraction of the corruption cases coming to his attention while the core of the problem remained unaddressed."[53] Murphy obtained Walsh's resignation.

Contrary to the mayor's prediction, the Knapp Commission continued past the New Year into 1971. With city funding unavailable, the commission applied for a grant from the Law Enforcement Assistance Administration (LEAA) of the U.S. Department of Justice. The grant funded the commission for another six months. At the urging of Mayor Lindsay and Police Commissioner Murphy, the city council also extended the commission's subpoena power.

Although Murphy continued to have the Knapp Commission looking over his shoulder, he managed to use it to his advantage. He believed that the changes needed in the NYPD were unattainable if pursued only by his own reform-minded administration, however forceful and well intended it might be. The institution of the NYPD was simply too entrenched and resistant to change. So Murphy invoked Knapp as a sword of Damocles, as Murphy later described, to prod his commanders to address corruption problems before possible exposure by Knapp that would cause embarrassment or worse. To one recalcitrant borough commander Murphy intoned, "It's you who's going down the tubes on this corruption business, not me. It's a new ball game."[54] The Knapp Commission gave Murphy cover for departmental reforms: grumbling cops could believe that Murphy was only doing what he had to do because of Knapp pressures. While

Murphy later conceded that he "desperately needed" the commission, he was a bit dismissive of Whitman Knapp and Mike Armstrong as "newcomers" who were excited to talk about cops in the sanctuary of the Yale Club.[55] Whatever the motivation, Murphy's shake-up of the NYPD's anticorruption apparatus would be so swift and thorough that the Knapp Commission had to conduct a second round of interviews of police supervisors assigned to anticorruption positions because Murphy had changed all of the officers as well as most of the procedures.[56]

The Knapp Commission seemed particularly proud of having gained the cooperation of a number of police officers. Regarding the possibility of a corrupt cop openly describing his activities and knowledge, the report asserted, "We were informed by people experienced in police work that no police officer had ever given such information and that none ever would, even if he himself were caught in a corrupt act and were offered immunity in exchange for his testimony. The tradition of the policeman's code of silence was so strong, we were advised, that it was futile to expect such testimony from any police officer. The most that could be expected was anonymous information or, if we were extremely lucky, testimony given under oath on an anonymous basis."[57] The report's assertion was misleading. Captain Max Schmittberger testified about his own corruption and the corruption of other cops before the Lexow Committee in 1894, and a small number of other cops cooperated during the Curran- and Gross-era scandals.[58]

Regardless of the historical context, the report boasted of having gained cooperation from five corrupt cops. The cooperating cops were a mixed bag. Most prominent was Robert Leuci (the "Prince of the City") who knew of corruption in the Special Investigation Unit (SIU) of the Narcotics Division, but he did little direct work for the Knapp Commission and never testified at the public hearings because the U.S. Attorney's offices in Manhattan and Brooklyn needed him for continued undercover work. Like Frank Serpico, Leuci resented that the Knapp Commission

focused only on cops and ignored corruption elsewhere in the justice system.[59] Of less importance, and never memorialized by Hollywood, was Waverly Logan. Finding Logan did not take much effort by the commission: he had already been dismissed from the department and had spoken about corruption with a reporter on television. Logan could not be used in any active investigative role, but gave believable testimony at the public hearings about routine, low-level corruption.[60] Edward Droge was another cop involved in low-level corruption, a "grass-eater" instead of a "meat-eater," to use the terms popularized by the commission proceedings.[61] Commission investigators caught Droge through a recording made by a drug defendant who was supposed to pay cash to him. Droge was already on leave from the department to attend school, so his cooperation was limited to providing information and public testimony instead of acting undercover.[62] The other cooperating grass-eater was Al Jannotta, the cop mentioned above who could not be used to testify.[63] He would be convicted at trial for taking thirty dollars from a tow truck operator.[64]

The commission's fifth cooperating corrupt cop was Bill Phillips. Phillips's story is one of the most remarkable in NYPD history. A true meat-eater, Phillips spent fourteen years on the force engaging in almost unrelenting corruption by extorting gamblers, businesses, and prostitutes, although he claimed that he never took the "dirty" money of payoffs related to guns or narcotics. The commission heard of Phillips from a civilian informant who reported that prostitute Xaviera Hollander (soon to be famous as the "Happy Hooker") paid off Phillips. Commission investigators caught Phillips on tape in recordings made by the cooperating civilian.[65] After he decided to help himself, Phillips became the commission's star cooperator. Smooth and glib, he successfully worked undercover and then dazzled the press and public as the first police witness at the commission's public hearings. After his work for the commission, he

became the central witness in a series of perjury cases against cops (described below) brought by the U.S. Attorney for the Southern District of New York. The commission's report effusively praised Phillips's cooperation for nearly seven pages, citing his "ingenuity" and "courage."[66] The report, however, included a footnote stating that Phillips was indicted in New York County for a double homicide that occurred in 1968. Sticking with the pro-Phillips tone, the footnote also stated that the case was tried to a hung jury that was ten to two in favor of acquittal, and a retrial was scheduled. After the report was filed, Phillips was convicted and received a sentence of twenty-five years to life that was upheld by the U.S. Supreme Court. Decades later, Mike Armstrong continued to believe that Phillips was innocent, possibly framed as retaliation for his cooperation. He blamed the conviction in the retrial on Phillips having an ineffective defense attorney.[67] Phillips obtained parole in 2007.[68]

While the commission's televised hearings had the biggest impact on the public, the biggest impact on prosecutors and on the role of criminal prosecution in anticorruption efforts came in the commission's recommendation for establishing the position of a special state prosecutor. Knapp's casual remark in July 1970 shortly after creation of the commission about the problems of district attorneys in prosecuting cops seemed to become a guiding principle in the commission's final report in December 1972. The report stated, "A basic weakness in the present approaches to the problem of police corruption is that all agencies regularly involved with the problem rely primarily on policemen to do their investigative work. . . . The District Attorneys in the five counties . . . depend primarily on policemen to conduct investigations."[69] The commission concluded that police officers and civilians did not report matters of police corruption to district attorneys because they distrusted those offices to handle corruption cases and, even worse, feared retaliation for having made such reports. The commission held itself out

as a model because it was staffed with investigators who were not members of the NYPD. In addition, the special prosecutor would have to be a state position because a city office could not adequately target corrupt officials who might hold noncity positions. Perhaps as a nod to the concerns voiced by Frank Serpico, Robert Leuci, and others, the commission recommended that the special prosecutor be authorized to investigate "anyone involved in the criminal process," not just cops.[70]

Further, the commission wanted the special state prosecutor position created immediately. To accomplish this and to avoid any delay that might be caused by review of the proposal by meddlesome elected state legislators, the commission suggested that Governor Rockefeller issue an executive order for the creation of the position of a Special Deputy Attorney General within the New York State Attorney General's Office with "jurisdiction in the five counties of the City and authority to investigate and prosecute all crimes involving corruption in the criminal process."[71]

As far reaching as the commission's recommendation for a special state prosecutor might have seemed, Governor Rockefeller took it even further. The commission wanted a special prosecutor with authority to investigate, convene a grand jury, issue subpoenas, and take cases to court, but the main function would be to oversee the district attorneys, who would retain their primary authority over corruption matters.[72] The special prosecutor would use his full prosecutorial authority sparingly, such as when there might be a jurisdictional conflict between district attorneys. Rockefeller instead chose an option proposed, according to Armstrong, by the governor's aide, Maurice Nadjari. The Nadjari model had the special prosecutor as a large agency that would take the lead in all matters of corruption in the city. Conveniently, Rockefeller named Nadjari as the first special prosecutor.[73]

Two points stand out in the creation of the special prosecutor. First, according to Armstrong's account, the intense three-day session that resulted in the Nadjari plan was a huddle between Knapp, Armstrong, the state attorney general, and several high-level state officials. The district attorneys, who were supposed to be the first line of corruption fighting according to the supposed preferences of the Knapp Commission, were not part of the discussion. The district attorneys were angry over the many months of perceived slights coming from the Knapp Commission's formation and proceedings. In the process that led to choosing the Nadjari model, if it had seemed that the Knapp Commission had already thrown the district attorneys under the bus, then the Rockefeller administration backed the bus over them a few times.

Second, clear alternatives existed to the Nadjari model. The commission's more modest preference for a special prosecutor was one. For another, after receiving the preliminary Knapp Commission report, Mayor Lindsay proposed appointment of a statewide criminal justice commissioner who would have authority to investigate and monitor, but not to prosecute. Not surprisingly, the Lindsay proposal was in line with the preferences of the city's five district attorneys. The district attorneys had all met with Lindsay and spoke of a similar proposal for a statewide auditor for criminal justice matters. Lindsay also contended that the state "recklessly abused and distorted" its concern about corruption in the city while ignoring possible corruption elsewhere in the state.[74] Lindsay's complaint harkened back to the earlier cyclical police scandals, particularly to the appointment of the Lexow and Curran Committees, when city Democrats believed that upstate Republicans tried to score partisan political points under the guise of fighting corruption in the city.[75]

The Knapp Commission had its greatest effect on the prosecution of police corruption by creating a strong, well-funded (some would say abusive and overfunded) special prosecutor. That

development infuriated the sitting district attorneys and spurred them to greater action on prosecuting police corruption. The Knapp Commission greatly influenced prosecutors in other areas as well. The proactive investigations conducted by the commission by using street informants and undercover operations raised the bar for how aggressively prosecutors should pursue their investigations. The publicity-savvy commission made sure that the public knew the results of the investigations, so the district attorneys wanted to appear to be keeping up for the sake of their egos and reelection prospects. With the fading of Tammany Hall by the 1970s, the district attorneys likely had to be concerned more with public opinion and less with political bosses than the DAs of earlier scandal eras. Earlier prosecutors might have brushed aside demands for action on police corruption if they were secure in what mattered more: Tammany support. In addition to leading by investigative example, the Knapp Commission also directly referred many cases to the district attorneys. Those cases could not be swept under the rug, if that option even entered the thoughts of the newly fired-up D.A.s.

The Prosecutors

Particularly in comparison with the earlier cyclical scandals, the Knapp-era scandal produced so many prosecutions by so many different offices that the circumstances and personalities of the particular prosecutors seemed to matter less. Everybody was prosecuting cops. Nevertheless, three of the prosecutors stand out: Manhattan D.A. Frank Hogan, Bronx D.A. Burton Roberts, and Special State Prosecutor Maurice Nadjari.

Frank Hogan is still held in high regard as the model of the modern urban prosecutor, although he became a prosecutor almost by happenstance, never made his reputation in the courtroom, and flopped when he tried for other positions. Hogan grew up in modest

circumstances, wanted to play professional baseball, and then switched to newspaper reporting and studied journalism at Columbia University. After graduation, he decided that a legal career would pay better than newspaper reporting, so he returned to Columbia to attend law school, where he did not distinguish himself, even failing criminal law. Private practice was difficult in the Depression, but Hogan caught the eye of Thomas Dewey. When Dewey assembled a staff in 1935 after being appointed as a special prosecutor investigating organized crime, he hired Hogan. Dewey assured that Hogan would spend more time in the office than in the courtroom by appointing him as the administrative assistant after Dewey's election as district attorney in 1937. When Dewey, a Republican, ran for governor in 1941, he recommended four people who might succeed him as district attorney. Hogan was the only Democrat on Dewey's list, Tammany Hall decided to back him, and Hogan was elected D.A. at the age of thirty-nine.[76]

Hogan built his reputation on his low-key professional management style. The prestige of being a prosecutor in Manhattan attracted highly qualified applicants, so Hogan's longevity in office nurtured a small army of loyalists who served under him and went on to assume judgeships, elective office, or powerful legal positions (such as Whitman Knapp). Hogan failed in his run for the U.S. Senate in 1958, and the 1960s brought controversial prosecutions of black militants, campus radicals, and obscenity charges.

By 1970, some thought Hogan's time had passed. The Knapp Commission may have pushed for the appointment of a special prosecutor partly because Knapp thought Hogan's measured style was insufficiently aggressive to catch corrupt cops, and the commission may have felt emboldened to attack the sitting district attorneys because of Hogan's diminished influence. Indeed, Hogan's position as the most prominent member of the Rankin Committee did little to keep Mayor Lindsay's idea alive. The sinking of the Rankin Committee, the barbs

thrown by Whitman Knapp, the commission report's criticism of prosecutors, and the creation of the powerful special prosecutor's post certainly disrupted the end of Hogan's career. Hogan might have retired after his eighth term in office in 1973, until an unexpected primary challenge from a man he thought unfit to be district attorney made him decide to run. He won both the primary and election easily, but he was gravely ill. He resigned on December 26, 1973, just weeks after his reelection, entered the hospital the next day and stayed there until his death in April 1974.[77]

Burton Roberts was one of the veterans of Frank Hogan's office. As Hogan was soft spoken, Roberts used a voice that reached fog horn levels. Because Hogan did not require that his assistants working under him conduct themselves in his own restrained way, Roberts flourished as an aggressive courtroom prosecutor. After decorated service in World War II followed by N.Y.U. Law School, he worked with Hogan from 1949 until 1966, when the Bronx district attorney lured him north to be the chief assistant D.A. After the district attorney resigned to pursue a judgeship, Roberts became acting district attorney, and then was elected to a full term in 1969. Author Tom Wolfe used Roberts as the model for the testy but honorable judge Myron Kovitsky in the novel *Bonfire of the Vanities*.[78]

Roberts's relatively short tenure as Bronx district attorney coincided with the developing story of the police scandal. He was an early player as the scandal unfolded because Frank Serpico brought police corruption allegations to him. Serpico and Roberts dealt with each other through the lenses of their mutual suspicions: Serpico figured that Roberts would never go after corruption higher than the street-cop level, and Roberts feared that that Serpico would never fully cooperate (make recordings) or become a believable witness. Roberts successfully pressured Serpico to testify in the grand jury, but Serpico felt betrayed and refused to testify at

trial when the indictment included no supervisors.[79] Again, Roberts pressured him. After they argued about whether Serpico would have to shave his beard to improve his courtroom appearance, Serpico testified in a perjury case against Officer Robert Stanard.[80] Stanard was convicted, and Roberts pushed hard for Serpico to be promoted to detective. NYPD Commissioner Leary called Serpico a "psycho" and declined Roberts's request.[81] Roberts's role shifted away from dealing with Frank Serpico to dealing with the Knapp Commission.

As the prosecutor who pursued the Serpico-inspired charges in the Bronx and as a member of the highly criticized Rankin Committee, Roberts had particular reasons to be irritated by the Knapp Commission, on top of his irritable nature. The commission's final report used statements from Roberts to make points about the inadequacies of the district attorneys as police corruption fighters. Regarding the reliance of district attorneys on the police to conduct investigations, the report cited an example of a police lieutenant on the Bronx D.A.'s squad who received a report about corruption of a detective on the same squad. Instead of acting on the corruption allegation, the lieutenant arranged a transfer of the detective. The commission's report printed a statement to the press by Roberts that sounded overly sympathetic to cops and soft on corruption when he suggested that the lieutenant was "motivated by compassion for a fellow policeman."[82] As if to suggest inconsistency in Roberts's views, the report also quoted Roberts's testimony before the commission, in which he complained about a judge giving a suspended sentence to a convicted cop after the prosecutor asked for jail time.[83]

When the commission's preliminary report came out, Roberts was the most outspoken district attorney in opposition to the proposal for a special prosecutor. Roberts predicted a "circus" at the suggestion of even the milder model of a special prosecutor (not the stronger model later chosen by Rockefeller). Roberts called the special prosecutor a "gimmicky super-

D.A." who would pull attention away from the internal anticorruption reforms needed by the police department.[84] By the time of the special prosecutor's appointment in September 1972, Roberts was already headed for the exit with plans to run for a judgeship in Manhattan. He was elected in November 1972, resigned as district attorney on January 1, 1973, and began sitting as a trial court judge the next day.[85] Rumors that he had moved his base to Manhattan in order to run to succeed Hogan as New York County D.A. did not come to pass, perhaps due to Hogan's decision not to retire in 1973.[86]

Maurice Nadjari became the dominant prosecutorial personality of the Knapp-era scandal, which was quite an accomplishment considering that people like Frank Hogan and Burton Roberts were in the picture. Even four decades later, when New York's governor considers a special prosecutor to look into corruption or policing matters, the state's experience with Nadjari continues to serve as a cautionary tale.[87]

Nadjari was another alumnus of Hogan's D.A.'s office. He served under Hogan from 1953 to 1967, when he left to become the chief assistant D.A. in Suffolk County. Although Hogan disagreed vehemently with the creation of the special prosecutor position, he called Nadjari a "friend" and sounded like an old teacher patting a former student on the head when he explained, "He was with me a good many years. He's a good assistant."[88] Hogan's declining health, however, meant that his successors would have to deal with Nadjari.

By the time Nelson Rockefeller received the draft of the Knapp Commission report, it was clear that he had settled on Nadjari to be the point man in the governor's decisions. Nadjari was present for the three days of meetings between Knapp, Armstrong, and the governor. In the middle of those meetings, Rockefeller instructed Nadjari to write up a plan for the special prosecutor's position, and Nadjari picked an option that created the largest, strongest, and most

richly funded special prosecutor's office that any of the parties might have imagined.[89] Nadjari's plan was remarkable: the budget for its first year was $4 million, which allowed the hiring of two hundred investigators. David Burnham, creator of the scandal's triggering event, pointed out that the special prosecutor's budget would amount to one-quarter of the entire spending in New York City for the prosecution of crime.[90] If Nadjari intended to step on toes, he was able to ensure that he had heavy shoes.

Nadjari lasted in the position of special prosecutor from his appointment in September 1972 until the state attorney general appointed a successor in June 1976. Governor Hugh Carey tried to order Nadjari's removal in late December 1975, but Nadjari resisted by strongly suggesting that the governor wanted to thwart investigations of political corruption, so the attorney general (Nadjari's actual boss) gave Nadjari six more months on the job to complete investigations. The end of Nadjari's tenure brought about almost mind-boggling political and prosecutorial maneuvering. For instance, Governor Carey appointed a special state investigator (former judge Jacob Grumen) to investigate the special prosecutor (Nadjari) regarding Nadjari's suggestion that Carey acted from "improper influences" in trying to dismiss Nadjari. Grumen conducted a four-month investigation and issued a one-hundred-page report exonerating Carey. Nadjari dismissed Grumen's work as "no investigation" and refused to back off the suggestion that the governor acted improperly.[91]

Wildly opposing views of Nadjari's work emerged from his time in office. Knapp Commission counsel Armstrong summed up one view: "Nadjari turned out to be a disaster. Aided and abetted by Judge John Murtagh, an unabashedly pro-prosecution judge who was assigned to the special prosecutor on a permanent basis, Nadjari began a rampage. For the next three years, judges, prosecutors, and defense counsel were subjected to high-handed and

invasive, but well-publicized, prosecutions, often based on the flimsiest of legal theories."[92] Robert Leuci, who complained repeatedly during his cooperation that prosecutors focused excessively on low-level cops, saw Nadjari's efforts and downfall differently: "Maurice Nadjari fought his way into the throne rooms and was targeting the political duplicity of the city. They labeled him a zealot, and some of his staff certainly were. The appellate courts ultimately overturned many of his convictions. But the man was a true believer. I liked him and admired him, but I knew his days were numbered."[93] Some commentators often focused on Nadjari's physical appearance to an unusual degree, as if groping for something that might explain what made him tick. Leuci described him as "dark-featured and handsome with shadowy, expressionless eyes."[94] In a *New York Times* profile, Anthony Lewis went further: "Meeting Maurice Nadjari, one can see immediately why he captivated Nelson Rockefeller. There is a dynamism in him, the feeling of a caged tiger, along with a great deal of charm. . . . He is a notably handsome man, with the look of a well-preserved Dartmouth athlete: dark, elegant features, short black hair flecked with gray, blue oxford button-down shirt, dark blue blazer with gold buttons."[95]

Armstrong raised an important point in the unusual arrangement that the special prosecutor's office had with a judge specifically assigned to handle its cases. A prosecutor's actions sometimes can be emboldened or restrained depending on the inclinations of the judge handling the matters that the prosecutor brings to court, from search warrants and wiretaps to trials and sentencings. Justice John Murtagh provided judicial support for Nadjari's efforts for over three years, even while appellate courts became increasingly critical of Nadjari's cases. Finally, in late 1975, even Murtagh seemed to be fed up with Nadjari's tactics when he dismissed indictments brought by the special prosecutor against a politician and a judge.[96] Murtagh died

suddenly from a heart attack in his chambers a short time later while he was considering the legality of the special prosecutor's charges against the chairman of the state Democratic Party.[97]

Whatever one's assessment of Nadjari, there is no doubt that he raised the level of police prosecutions to unprecedented heights. Besides the many cops that his office prosecuted, his presence put pressure on the other prosecutors in the city. All of the five county district attorneys, as well as the federal prosecutors, indicted cops in what seemed like a competitive frenzy.

While Hogan, Roberts, and Nadjari were the most influential prosecutors of the Knapp-era scandal, Queens D.A. Thomas Mackell and Brooklyn D.A. Eugene Gold deserve mention—not so much for their prosecuting but for being prosecuted. Mackell, a former cop and state senator who was elected as the Queens district attorney in 1966, was indicted by Nadjari's special grand jury in April 1973. The convoluted charges focused on Mackell allegedly obstructing justice by withholding information from Bronx D.A. Roberts about a Ponzi scheme investigated by Roberts's office, in part because individuals on Mackell's staff had invested in the scheme. Nadjari personally tried the case against Mackell and gained a jury conviction in Judge Murtagh's court. However, the conviction was overturned by a panel of the state's Appellate Division. The court's opinion strongly criticized both Nadjari and Judge Murtagh, found fault with the prosecution's legal theory and insufficiency in its evidence, and, in perhaps the most unusual aspect of its ruling, dismissed the case so Nadjari could not retry it.[98] Mackell had already resigned as district attorney shortly after indictment and under threat of being removed by Governor Rockefeller. The removal of a district attorney in New York City had not occurred since Governor Theodore Roosevelt removed Manhattan D.A. Asa Bird ("To Hell with Reform") Gardner in 1900 in the wake of the Lexow-era scandal.[99]

Brooklyn D.A. Eugene Gold seemed to be a steadying influence in the political and prosecutorial tumult of the scandal. He was less prone to the anti-Knapp and anti-Nadjari rhetoric than his Manhattan and Bronx counterparts. A native Brooklynite and experienced criminal defense attorney, he won a special election in 1968 to fill the position when the sitting district attorney became a judge. In his thirteen years in the position, the hard-working Gold expanded the office from ninety prosecutors to over two hundred.[100] During the Knapp-era scandal, his office's handling of the 13th Division cases showed how a large number of police officers could be prosecuted on corruption charges with reasonable success, at least through the trial stage. He retired seemingly without controversy in 1981, and his reputation was sufficiently respected that a candidate running to succeed him used the campaign slogan "Good as Gold."[101]

Gold's arrest less than two years after he left office was shocking. In Nashville to address the convention of the National District Attorney's Association, Gold was accused of sexually molesting a ten-year-old girl in her room at the Opryland Hotel. The girl was the daughter of a prosecutor attending the convention. Two months later, Gold admitted to the facts of the charges, which carried a maximum penalty of life imprisonment. Almost as shocking as the crime was the leniency of the agreed-upon disposition: after Gold served two years on probation and received psychiatric treatment, the charges would be dismissed. Gold left the courtroom arm-in-arm with his wife and planned to receive the psychiatric treatment in Israel, where he had a home. The Nashville D.A. claimed that the disposition was "a fairly routine way of handling this type of case."[102]

The Prosecutions

Research located information about criminal charges against a total of 219 police officers in prosecutions related to the Knapp-era scandal. This far exceeds the totals associated with the Lexow era (47), the Curran era (17), the Seabury era (18), and the Gross era (35). The Knapp total is almost double the number of those four previous scandals combined (117). The biggest factor in the increase was the number of prosecutors' offices that joined in the effort. The previous scandal-related prosecutions were handled almost entirely by the Manhattan D.A.'s office until the Gross era, when the Brooklyn D.A. stepped up. The Knapp era, of course, had the direct contribution of the special prosecutor in that Nadjari aggressively obtained indictments against many police officers. A less direct contribution of the special prosecutor was that the publicity-savvy Nadjari (like the publicity-savvy Knapp Commission) put pressure on the district attorneys to join the crackdown on police corruption by bringing more indictments. New York City district attorneys were experienced in turf battles over cases with each other and with federal prosecutors. When the prosecution of cops became another piece of turf that might be grabbed by the special prosecutor or by the feds or even by another D.A., each of the district attorneys grew competitive and brought more cases against cops.

Another factor in the huge number of police prosecutions was the nature of the police corruption exposed in the scandal. While the Knapp Commission explored a range of police wrongdoing, the most widespread corruption was the "pad." The commission's report defined the "pad" as follows: "The 'pad' refers to regular weekly, biweekly, or monthly payments picked up by a police bagman and divided among fellow officers. Those who make such payments as well as policemen who receive them are referred to as being 'on the pad.'"[103] The commission credited illegal gambling as the largest source of pad payments, along with many legitimate businesses that needed licenses to operate. Besides generating money for participants, the pad

served the perverse function of promoting loyalty and camaraderie among cops: the corruption was something they all did together.[104] The books and movies *Serpico* and *Prince of the City* emphasized that cops on the pad felt that cops who declined payoffs were disloyal to brother officers. Since large numbers of cops were on the pad, prosecutors had to charge many cops in order to join the response to that sort of corruption.

Also, although more difficult to ascertain, the Knapp era seemed to herald a change in the atmosphere surrounding police misconduct that supported the increased prosecution of cops. Tammany Hall was almost gone so cops turned more to their union to look after their interests and received less support from politicians. Crime was up, which seemed a particular concern for the white ethnic community from which the police department drew members and support. With the city's rising crime and failing economic health, impatience grew with a police department that not only failed to protect citizens but also hurt the economy by siphoning money from city businesses. The city's shrinking white population lost influence to a growing minority community that had strong complaints about police misconduct beyond payoffs and systemic corruption. Finally, the "blue wall" that kept cops silent about the misconduct of other cops developed cracks. The Knapp Commission and the related prosecutions produced the first significant numbers of police who informed or cooperated against other cops. Some cops testified at trial for the prosecution, and snitches like Serpico and Leuci became famous in bestsellers and movies. Even the NYPD seemed fed up with corruption: Commissioner Murphy and the police department instituted reforms that included recruiting rookie cops to be "field associates" who would secretly report on corruption matters.[105]

As in earlier scandals, prosecutions tended to happen in clusters. That is, multiple defendants were charged as part of investigations of particular police units, squads, or precincts.

The largest cluster, and perhaps the best known, came from the cases related to the Special Investigating Unit (SIU) of the Narcotics Division. The book and movie *Prince of the City* described Robert Leuci's tortured decision to cooperate and the turf battles between prosecutors' offices over how to deal with him. Research found 35 prosecutions of SIU officers, almost evenly divided between the U.S. Attorney's offices of the Eastern District (13) and the Southern District (11) and the special prosecutor's office (11). Another major cluster of prosecutions came in the 13th Division cases, in which the Brooklyn district attorney prosecuted twenty-four cops who had been assigned to plainclothes in the 13th Division, spread over four precincts in Brooklyn. Some of the clusters were much smaller. For instance, all four members of the gambling squad of the 32nd Precinct in Harlem were charged with perjury by the Manhattan district attorney's office.

With the larger number of prosecutions and the pressures of the scandal, unfortunately, came three suicides by police. Det. Joseph Nunziata shot himself in a parked car in Brooklyn on March 27, 1972, after learning that federal authorities wanted to ask him about a payoff from an undercover operative.[106] Lt. Fletcher Hueston shot himself in a Brooklyn Heights hotel room on May 1, 1972. He would have been charged the next day in the indictment of cops under his command in the 13th Division.[107] Det. Dave Cody of SUI was a partner of Robert Leuci and was considering cooperating in the investigation until he shot himself in a park in the Bronx after an afternoon of heavy drinking on May 24, 1974.[108]

A total of nine different prosecutorial agencies handled the scandal-related prosecutions. Table 7.1 shows the distribution of cases among those agencies.

TABLE 7.1 Prosecuting authorities in Knapp-era cases

Agency	No. charged
Special prosecutor	48
Brooklyn district attorney	47
Manhattan district attorney	38
Bronx district Attorney	30
U.S. Attorney SDNY[109]	24
U.S. Attorney EDNY	14
Queens district attorney	9
Staten Island district attorney	7
U.S. Attorney New Jersey[110]	2
Total	219

The number of police prosecuted by the special prosecutor was large, but the number certainly could have been higher if Nadjari had not used his resources to pursue so many nonpolice corruption targets.

Although the surname review for ethnicity is quite unscientific, it does appear to show a shift in the NYPD away from its Irish-dominated roots, if not to genuine diversity. Some fifty-seven of the charged officers (26%) had identifiable Irish surnames, a large drop from the previous scandals. Correspondingly, the number of identifiable Italian surnames (sixty, or 27%) grew. Perhaps one dozen officers (6%) had names that appeared to be of Hispanic origin, sometimes identified with both first name and surname (for example, Ramon Rodriguez and Angel Ramon). Press accounts of the era, thankfully, did not usually comment on the race of the defendants, but at least a small number of African Americans were defendants. One comment on race was made by Justice Milton Mollen in Brooklyn. He pointed out at sentencing in one of the 13th Division cases that the defendant had worked to make sure that fellow African American

officers in the payoff scheme received their fair share of graft. In a dubious development for diversity, that sentenced defendant was the first woman (Wilma Greene) charged in any of the scandal-related prosecutions.[111] Justice Mollen would rise to appointment to the Appellate Division, where he had to recuse himself from the decision to reverse many of the 13th Division convictions.[112] He went on to preside over the investigative commission in the next cyclical scandal.

The ranks of the accused showed a lower percentage of defendants who were patrolmen (54%) than in the previous two cyclical scandals, both of which had been quite bottom heavy in charging the lowest-ranking officers (Gross: 77%, Seabury: 88%). Most of the defendants from the large SUI cluster held the rank of detective, so the overall percentage of detectives charged was quite high (26%) compared to all of the earlier scandals except for Lexow. Table 7.2 shows the ranks of the defendants.

TABLE 7.2. Ranks of police charged in Knapp-era prosecutions

Rank	No. charged	% of total
Inspector	2	1
Deputy inspector	2	1
Captain	1	.5
Lieutenant	10	5
Detective	57	26
Sergeant	28	13
Patrolman	119	54
Total	219	100

As in all of the earlier scandals, prosecutors took aim at defendants at the high rank of inspector. Inspector Thomas Renaghan, who commanded the Narcotics Division, was charged by the Manhattan D.A. with misdemeanor-level contempt for his responses to a grand jury about payoffs from a mobster. He was convicted at trial, sentenced to four months in jail, and then had his conviction reversed by the Appellate Division.[113] Inspector Robert Johnson was charged with perjury by the special prosecutor for false grand jury testimony about bribe receipts and was found not guilty at trial.[114] Unsuccessful prosecutions of inspectors in earlier scandals came in the Gross era (charges against two inspectors dismissed), the Seabury era (one inspector found not guilty at trial), and the Lexow era (trial conviction reversed for one inspector). Only the Curran era had success in charging inspectors with D.A. Whitman's prosecution of four inspectors (three convictions, one reversal).

The large number of defendants and the aggressiveness of prosecutors to find prosecutable cases resulted in a wider variety of charged criminal offenses compared with earlier scandals. Some questions arose in identifying the primary charged conduct. For instance, the corrupt practices of the defendants in the cluster of cases from the Bronx Narcotics Division included robbing drug dealers. These were tabulated as robberies, although they could have been classified as drug-related offenses. Similarly, many of the bribery/extortion offenses attributable to the SIU were drug related. The overall effect is that Table 7.3, showing the primary charged conduct of the cases, may appear to understate the degree to which drugs became a driving force of corruption in the Knapp era.

TABLE 7.3. Primary charged conduct in Knapp-era prosecutions

Conduct	Cases	% of total
Bribery/extortion	114	52
Perjury	54	25
Drugs	21	10
Tax violations	9	4
Robbery	7	3
Gambling	4	2
Civil rights	3	1.5
Larceny	2	1
Assault	2	1
Counterfeiting	1	.5
Contempt	1	.5
Homicide	1	.5
Total	219	100

The heavy reliance on perjury charges that began with the Seabury- and Gross-era prosecutions seemed to begin to taper off, perhaps because court decisions on compelling testimony and inferring immunity became more favorable to defendants. Bribery and extortion (combined again here because of the occasional difficulty in factually distinguishing between them) were the staple of the pad of regular payments made to pay off cops.

An important prosecutorial development was the application of federal civil rights law to police misconduct. The U.S. Attorney of the Eastern District of New York obtained indictments against three SIU detectives for robbing drug dealers as violations of Title 18, United States Code, Section 242 for depriving the drug dealers of their civil rights without due process. The three charged detectives had been partners of suicide victim Joseph Nunziata. This particular

federal foray into police corruption was successful. All three were convicted and sentenced to nine years imprisonment.[115]

The high volume of prosecutions in the Knapp era made identifying the underlying civilian conduct a bit more complicated than the same task in earlier scandals. For instance, the underlying conduct was mostly prostitution in the Seabury era and gambling in the Gross era. In the Knapp era, however, the criminal prosecutions (like the Knapp Commission findings) covered a wide range of police misconduct, so the underlying activity varied as well. Table 7.4 shows, for instance, whether a bribe payoff received by a cop or perjury committed by a cop was related to drug activity.

Table 7.4. Primary underlying civilian activity in Knapp-era prosecutions

Activity	Cases	% of total
Drugs	72	33
Gambling	83	38
Other unlawful	37	17
Other legitimate[116]	27	12
Total	219	100

This underlying activity breakdown confirmed the growing prominence of drugs in fueling police misconduct. Gambling lost ground as a corruption source, particularly compared to its dominance in the preceding Gross era. Gambling would continue to fade as a corruption source as the legal state lottery grew and undermined the numbers game, although officials largely ignored the Knapp Commission's recommendation to repeal all criminal gambling laws.[117]

The other vices of prostitution and liquor that drove early scandals had faded, but some of the pads that collected from numerous sources included prostitution sources (note that Knapp's star cooperator Bill Phillips was caught because he took payoffs from a prominent prostitute). Liquor was still a prominent social vice, of course, but its potential as a corruption source diminished since the times of Sunday closing laws (Lexow era) or outright prohibition (Seabury era). Still, liquor-related corruption certainly played a part in the payoffs made by bars and restaurants that are included in the legitimate underlying activities.

The common practice in the earliest scandals of charging multiple indictments in the same jurisdiction against a single defendant had ended. Just a very small number of defendants faced both state and federal charges or charges in two different counties, which was an accomplishment for orderliness in the tangle of prosecutors' turf battles.

A breakdown of the dispositions of prosecutions in table 7.5 shows a higher percentage of guilty pleas than in any of the earlier scandals. Much of this increase can be attributed to the increase in the number of defendants who decided to cooperate with investigators and prosecutors. Some cooperating cops were not prosecuted at all. In a high-profile example, prosecutors from different offices argued heatedly with each other, leading up to the decision to not bring charges against Robert Leuci.[118] In a more representative example, Det. Louis D'Ambrosio (a partner of suicide victim Nunziata) faced strong evidence with some of his wrongdoing caught on tape, and he decided to plead guilty and cooperate to receive a sentence of probation.[119]

TABLE 7.5. Dispositions of Knapp-era prosecutions

Disposition	No. of cases	% of total
Guilty at trial	50	23
Guilty Plea	46	21
Total Convicted	*96*	*44*
Dismissed	15	7
Conviction reversed	7	3
Not guilty at trial	33	15
Died[120]	3	1.5
Incompetent	1	.5
Total Not Convicted	*59*	*27*
Unknown Disposition	64	29
Total	219	100

Seemingly consistent with Bronx D.A. Roberts's complaint to the Knapp Commission, many of the defendants who were charged and received convictions that withstood appeals were given what might be considered lenient sentences that included no incarceration. However, some charges of conviction were only misdemeanors, so sentences of nonincarceration for first offenders might have been appropriate. Further, some of the sentences were affected by the defendants' cooperation. Also, and quite unusually, numerous defendants from the Brooklyn 13th Division cluster of cases had their sentences reduced to probation on appeal even as their convictions were upheld (described below). Table 7.6 categorizes the sentences of the 94 convicted defendants.

TABLE 7.6. Sentences of convicted Knapp-era defendants[121]

Sentence	No. of cases
Nonincarceration:	
Probation, cond. discharge, and/or fine	34
Incarceration:	
Less than 1 year	11
1 year	8
1 to 5 years	12
More than 5 years	13
Unknown	18
Total sentenced	96

One aspect of the greater involvement by federal prosecutors in corruption cases was the generally harsher sentencing that federal offenses brought to bear on convicted defendants. Of the thirteen defendants who received sentences in excess of five years, seven were prosecuted federally.

The 13th Division Cases

If a major accomplishment of the Knapp Commission and related police reforms was the disruption of the routine, systemic collections of the pad, then the 13th Division cases in Brooklyn were the best example of how criminal prosecutions fit (or did not fit) in the antipad efforts. The 13th Division was one of fourteen divisions of the NYPD. Operating in the Bedford-Stuyvesant, Brownsville, Crown Heights, and Fort Greene areas of Brooklyn, it had a public morals squad that handled gambling enforcement. About twenty officers, usually working in

plainclothes, were assigned to the squad at any given time. The blow of losing an assignment to the payoff-heavy squad was softened because the operators of the pad provided a generous severance package to any officer who was transferred out.[122]

The severance plan was only one aspect of the astounding level of highly organized corruption in the 13th Division pad. The racial diversity of the neighborhoods served by the 13th Division caused the pad operators to assign black or white officers to make collections so a gambling operator would have the comfort of being shaken down by a cop of his own race. The squad collected $20,000 per month (well over $100,000 in today's dollars), which was divvied up according to rank and whether any extra payments needed to be made for severance or because a pad participant had been arrested. Officers received about $10,000 per year, and superiors received between $15,000 and $20,000. Discipline among participants was not always perfect, however. After one participant made the payoff collections, he set his own car on fire and claimed that the money burned up so he could keep it all.[123]

The Brooklyn D.A.'s office broke the 13th Division case by gaining the cooperation of four of the participants in the pad. Of particular importance was Officer Steven Buchalski, who was convinced to cooperate by Assistant D.A. Joe Hynes.[124] Buchalski made tape recordings and testified at trial and departmental hearings in exchange for not being prosecuted and being able to stay on the police force. Three other officers received similar deals, and the prosecution moved forward with the ammunition of a modern police prosecution—cooperating cops and tape recordings.

On May 2, 1972, Brooklyn D.A. Gold obtained an indictment charging twenty-four police from the 13th Division with participating in the scheme to take payoffs to protect gamblers. D.A. Gold contended that the gamblers had organized-crime connections, but the

indictment named only cops. Three sergeants were charged, and the other twenty-one defendants held the rank of patrolman (or patrolwoman, for defendant Wilma Greene). Had he not committed suicide the day before, Lt. Heuston would have been the highest-ranking defendant.[125] Testimony at a departmental hearing later asserted that an assistant chief inspector who was in charge of the squad also received his share of the payoffs, but he was never charged criminally or departmentally.[126] With the twenty-four defendants, the 13th Division case was the largest indictment of police in NYPD history, even larger than the twenty-one defendants of the Gross-era indictment two decades earlier.

As a mega-case of Brooklyn cops charged with taking gambling payoffs, the 13th Division case mirrored the Gross-era indictment, but the postindictment developments diverged. The Gross-era defendants in the big case all hung together and went to trial with no guilty pleas and no cooperators, leaving the prosecution to rely on Harry Gross.[127] The 13th Division trial, in contrast, had cooperating cops ready to go and five defendants had already entered guilty pleas. The eighteen defendants who went to trial (one was severed) was the same number as in the Gross mega-trial. While the Gross trial defendants celebrated the collapse of the prosecution's case and received dismissals, the 13th Division trial moved smoothly for the prosecution. Sixteen defendants were found guilty and two were found not guilty. Justice Milton Mollen sentenced nine of those convicted at trial to three years in jail, and the seven others received sentences of one year. The five officers who previously pleaded guilty received sentences of probation. The four officers who cooperated were allowed to remain in the police department.[128]

What appeared to be a textbook prosecution ran into difficulties on appeal. All sixteen defendants appealed—four defendants had their convictions upheld by the Appellate Division and one had died so his conviction was vacated. The other eleven convictions were reversed by

the Appellate Division. New York State law required corroboration for testimony from an accomplice. Since the police cooperators were accomplices in the payoff scheme at an earlier point in time, their testimony required corroboration. The Appellate Division found insufficient corroborative evidence to support the convictions of the other eleven defendants. It appeared that an almost Gross-like prosecutive collapse loomed, but then the Court of Appeals reinstated the convictions of seven of the eleven dismissed defendants.[129]

The appellate treatment of the cases did not seem particularly unusual up to that point in the back-and-forth between the courts. The defendants convicted at trial appealed on fairly technical grounds, the Appellate Division reversed most of the convictions, and then the Court of Appeals reinstated most of those reversals. What followed next was unusual. The Appellate Division expressed its outrage that the defendants had engaged in a "shocking betrayal of the public trust" that did "grievous" damage to public confidence. Despite the corrupt conduct of the defendants, however, the court decided that incarceration was not an appropriate penalty because none of the cops had prior records, they were unlikely to reoffend, all had left the police department, and several years had passed since the convictions. Incarceration, the court intoned, would "undoubtedly cause severe and immeasurable damage" to the defendants' families and would "undoubtedly place additional strains on public resources." The court reduced the defendants' sentences to periods of probation.[130]

So, the Brooklyn D.A. aggressively investigated the 13th Division, convinced reluctant cops to turn against their colleagues by making tapes and testifying, built evidence of an entrenched pad of extraordinary scope, indicted the largest case in NYPD history, took pleas and convicted almost everyone else at trial, but ran into an appellate court that reversed convictions and changed Judge Mollen's jail sentences to probation. The prosecutors had taken pains to bring

a case that did not rely on an undependable witness like Harry Gross, but their frustrated efforts showed that many variables can undermine criminal prosecutions as a corruption remedy.

Bill Phillips and the SDNY Perjury Case

Like others before him in earlier scandals, Bill Phillips showed that a star witness before an investigative commission may not be effective when the venue shifts to the criminal court. Following up on the Knapp Commission's use of Phillips to make undercover tapes, federal prosecutors from the U.S. Attorney's Office (S.D.N.Y.) called cops to the grand jury, where they made false denials about their knowledge of illegal gambling and police corruption in East Harlem. On November 4, 1971, shortly after the Knapp Commission began its public hearings, U.S. Attorney Whitney North Seymour announced the indictment of eight patrolmen and two lieutenants on a mix of bribery and perjury charges. The eight patrolmen and one of the lieutenants worked in the 25th Precinct that covered East Harlem. Officer Phillips, who was named as a co-conspirator in the indictment, also worked in that precinct. The other lieutenant, Jack Kaminsky, was assigned to supervising plainclothes enforcement in the patrol borough that covered northern Manhattan. The investigation had moved quickly: Phillips was still making undercover recordings of cops for the Knapp Commission in August 1971, he testified at the public Knapp hearings in October, Kaminsky denied knowledge of corruption in October before a federal grand jury, and the case was indicted in early November.[131]

The ground shifted suddenly for Phillips and federal prosecutors. Phillips was living under the protection of U.S. Marshals in the Witness Security Program while he was still paid by the police department. An NYPD detective who had watched Phillips's televised Knapp Commission testimony thought that Phillips resembled the police artist's sketch of the suspect in

a Christmas Eve 1968 shooting in an Eastside apartment building that left two dead and one wounded. The Manhattan D.A.'s office followed up in secret. The survivor of the shootings and another witness identified Phillips through a one-way mirror after Phillips was brought to the D.A.'s office on a pretext. Other evidence developed, including a tape on which Phillips seemed to brag about having killed three people. Phillips testified before the grand jury, but he was still indicted in March 1972. In the meantime, the Kaminsky perjury case was close to trial, and all of the other SDNY cases relying on Phillips were pending. The PBA president proclaimed that Phillips being indicted confirmed the "phony nature" of the whole Knapp Commission.[132]

The subject matter of the Kaminsky trial was whether he lied before the grand jury. A tape recording that Phillips made with Kaminsky should have made the case quite straightforward. The trial, however, focused on Phillips. Under indictment for the double murder, Phillips bluntly claimed in his testimony that he had been framed by District Attorney Hogan in retaliation for his Knapp Commission cooperation.[133] As for the damaging twenty-minute taped conversation about corruption that Phillips made with Kaminsky, Kaminsky testified that he had not heard everything Phillips said, the conversation was taken out of context, and Phillips may have altered the tape. The jury acquitted Kaminsky after less than a day of deliberations.[134]

The fast collapse of the Kaminsky case showed clearly that Phillips, star of the Knapp Commission, was unusable as a trial witness. The U.S. Attorney's Office dismissed charges against the remaining nine defendants. Most of the accused officers returned to their jobs after departmental penalties of some lost pay.[135] Phillips was found guilty of the homicides at his second trial, as discussed earlier.

Conclusions

Every cyclical scandal presented some changes in how police corruption cases were developed and presented. The biggest changes might have occurred in the Knapp era. The Knapp Commission's insistence that prosecutors modernize their methods of investigating cops ushered in the era in which tape recordings would become common in gathering evidence of police corruption. The transition was not always smooth. Frank Serpico argued with prosecutors about wearing a recording device, and a memorable scene in the *Prince of the City* movie showed actor Treat Williams as Robert Leuci in pain as his body recorder short circuited. The move toward taping was consistent with advances in technology that made recordings of all types (body, telephone, bug, or video) more practical to use, as well as changes in laws that made intercepted conversations more likely to be usable in court. The Kaminsky case, though, served as a reminder that juries could still reject recorded evidence.

The Knapp Commission crowed about its success in using cooperating (or "flipped" or "turn around") cops to reveal corruption. Like recorded evidence, however, juries could still reject cases based on the testimony of cooperators. A cooperating cop might not be a better witness than the prostitutes or gamblers who testified in prosecutions in the earlier scandals. While the Knapp report placed too much reliance on the word of a cop like Bill Phillips, the report did recognize the important development of the breakdown of the culture that would not allow a cop to inform on other cops. The NYPD and prosecutors could work together to give favorable treatment to officers who cooperated, as in the 13th Division prosecutions, when the cooperating cops were not prosecuted and kept their jobs despite their wrongdoing. A contributing factor likely was the changing nature of the rank and file of the NYPD. As the force evolved away from Tammany protection and Irish domination, officers in the more diverse

department might have felt less allegiance to the unwritten rules of going along with corrupt behavior.

The possibility of being prosecuted is supposed to serve as a deterrent to discourage the activity. When cases are dismissed (like the S.D.N.Y. cases based on Phillips) or punishments are lenient (like the 13th Division cases), the theoretical deterrent effect of prosecutions can be diminished. Potential deterrence may be bolstered, though, by the investigative trend toward more tapes and cooperators. Cops engaged in pad-type corruption that required the participation of many individuals would feel less comfortable with both their fellow officers and the bribe payers due to the increased likelihood that someone might be recording or snitching. Perhaps as a consequence, the types of police corruption that emerged for the next cyclical scandal would tend to involve smaller numbers of officers.

Finally, the participation of so many prosecutors' offices in Knapp-era cases reduced the chance of a return to prosecutorial reluctance to take on police cases. The startling Knapp revelations and the well-publicized prosecutions would make it difficult for later prosecutors to turn a blind eye toward police corruption. In the common situation of a prosecutor being interested in personal advancement as well as pursuing justice, the example of Rudy Giuliani as a young federal prosecutor working on Knapp-era cases stood out to show how prosecuting cops can advance a career. Although the appointment of the special prosecutor did not work well by most accounts, the participation of federal offices in the prosecutorial fray was groundbreaking. In the 1980s and 1990s, federal prosecutors would take the lead in building police corruption cases in major cities, over the objections of those who bemoaned the "federalization" of criminal law.

Notes

[1] Martin Tolchin, "City Opens Study of Police Graft," *New York Times*, April 28, 1970.

[2] Lankevich, *American Metropolis*, 181.

[3] "Uncertain Industry: The Decline of Manufacturing in New York City," WNET, n.d., available at http://www.thirteen.org/uncertainindustry/content/nyc-manufacturing-in-decline/.

[4] "When Fun City Wasn't," *New York Times*, May 27, 2010.

[5] Lankevich, *American Metropolis*, 196.

[6] James Lardner, "The Whistleblower," *New Yorker*, July 5, 1993, 62.

[7] *Death Wish*, directed by Michael Winner, Paramount Pictures, 1974.

[8] *Serpico*, directed by Sidney Lumet, Paramount Pictures, 1973.

[9] *The Out-of-Towners*, directed by Arthur Hiller, Paramount Pictures, 1970.

[10] Lardner and Reppetto, *NYPD: A City and Its Police*, 276.

[11] Al Baker, "A Look at the Old Books: How the N.Y.P.D Used to Log Killings," *New York Times*, December 29, 2009; "New York Crime Rates 1960–2012," *The Disaster Center*, http://www.disastercenter.com/crime/nycrime.htm.

[12] Lardner and Reppetto, *NYPD: A City and Its Police*, 265.

[13] Lardner, *Crusader*, 60–61.

[14] Peter Maas, *Serpico* (New York: Viking Press, 1973), 58–118.

[15] Maas, *Serpico*, 131–133.

[16] Ibid., 183–185.

[17] Lardner, *Crusader*, 62–63.

[18] Jay Kriegel, "Pause and Honor John Lindsay: He Left a Legacy of Racial Healing and Civic Innovation," *New York Daily News*, May 4, 2010.

[19] Maas, *Serpico*, 199–206.

[20] Ibid., 216–219.

[21] Bernard Collier, "Eight City Policemen Arrested in Inquiry on Numbers Games," *New York Times*, February 12, 1969.

[22] Edward Conlon, *Blue Blood* (New York: Penguin, 2004), 250.

[23] Lardner, *Crusader*, 64.

[24] Some subsequent stories in the *New York Times* called Burnham's story a "survey," perhaps to give the bold exposé a more studious air consistent with the *Times*.

[25] Robert Daley, *Target Blue: An Insider's View of the N.Y.P.D.* (New York: Delacorte, 1973), 40.

[26] Knapp Commission, Commission to Investigate Police Corruption and the City's Anti-Corruption Procedures (New York: Braziller, 1972).

[27] Martin Tolchin, "City Opens Study of Police Graft," *New York Times*, April 28, 1970.

[28] David Burnham, "Leary's View of Survey on Corruption Is No Handicap to Inquiry," *New York Times*, April 30, 1970.

[29] David Burnham, "Report on Corruption Due in 2 Weeks," *New York Times*, May 6, 1970.

[30] Martin Arnold, "Mayor's Committee Investigating Police Corruption Meets Here Today," *New York Times*, April 26, 1970.

[31] "Text of Letter to the Mayor by Committee Set Up to Investigate Charges of Police Corruption," *New York Times*, May 15, 1970.

[32] David Burnham, "Calling of Kriegel and Fraiman Not Discussed in Graft Inquiry," *New York Times*, May 14, 1970.

[33] David Burnham, "Lindsay Bids 4 Lawyers Conduct Inquiry Charges Into Police Corruption," *New York Times*, May 20, 1970.

[34] David Burnham, "Lindsay Appoints Corruption Unit," *New York Times*, May 22, 1970.

[35] Richard Severo, "Whitman Knapp, 95, Dies; Exposed Police Corruption, *New York Times*, June 15, 2004.

[36] Lawrence Van Gelder, "Graft-Inquiry Head," *New York Times*, May 23, 1970.

[37] Knapp Commission Report, 36.

[38] David Burnham, "Rankin Disputes P.B.A. on Inquiry," *New York Times*, July 9, 1970.

[39] Maurice Carroll, "Panel of 5 Sworn in Police Inquiry: Head Asserts Prosecutors Couldn't Do Thorough Job," *New York Times*, July 30, 1970.

[40] Knapp Commission Report, 37–38.

[41] "Thorough Watchdog: Robert Kenneth Ruskin," *New York Times*, August 7, 1970.

[42] Robert Thomasson, "Court Rebuffs City's Investigation Chief," *New York Times*, October 1, 1970.

[43] David Burnham, "17 Police Accused of Moonlighting," *New York Times*, August 15, 1970.

[44] Daley, *Target Blue*, 42.

[45] "Police Classify Leary as a Missing Person," *New York Times*, September 6, 1970.

[46] Richard Severo, "Leary Served a Turbulent City," *New York Times*, September 6, 1970.

[47] Armstrong, They Wished They Were Honest, 136–138.

[48] Andy Wallace and Thomas Gibbons, "Howard Leary, 82, Commissioner of Phila. Police in the Mid-1960s," *Philadelphia Inquirer*, February 1, 1994.

[49] *Prince of the City*, directed by Sidney Lumet, Orion Pictures, 1981.

[50] Armstrong, They Wished They Were Honest, 61–77.

[51] Patrick Murphy and Thomas Plate, *Commissioner: A View from the Top of American Law Enforcement* (New York: Simon and Schuster), 146.

[52] David Burnham, "Murphy Is Sworn, Vows Crime Fight," *New York Times*, October 10, 1970.

[53] Murphy and Plate, *Commissioner*, 156.

[54] Ibid., 162–165.

[55] Ibid., 190–191.

[56] Knapp Commission Report, 46.

[57] Ibid., 47.

[58] "M. F. Schmittberger Police Chief Dead," *New York Times*, November 1, 1917. Bill Phillips, the Knapp Commission's most important police cooperator, called Schmittberger "the Bill Phillips of his time." Shecter, *On the Pad the Take*, 358. Ptl. Eugene Fox and Capt. Thomas Walsh cooperated and testified in the Inspectors case of the Curran era (see chapter 4). Officers Vito Romano and Max Brendler cooperated in the Gross era (see chapter 6).

[59] Robert Leuci, All the Centurions: A New York Cop Remembers His Years on the Street (New York: Harper Collins, 2004), 252.

[60] Armstrong, They Wished They Were Honest, 198–199.

[61] A "meat-eater" was a cop who aggressively abused his position for personal gain. A "grass-eater" was a cop who went along with the routine of accepting low-level payoffs. Chief Sydney Cooper, who mentored the cooperation of Frank Serpico and who became head of the department's Internal Affairs Division, received credit from Armstrong for coining the terms (Armstrong, *They Wished They Were Honest*, 27–28). The Knapp Commission's report used the terms to describe the department's widespread corruption (Knapp Commission Report, 4).

[62] Armstrong, They Wished They Were Honest, 115–122.

[63] Ibid., 71–77.

[64] Lacey Fosburgh, "Hogan's Office Defends Record on Fighting Police Corruption," *New York Times*, December 7, 1971. The records of the New York County Clerk's Office show that Jannotta was sentenced to an unconditional discharge on March 21, 1973.

[65] Armstrong, They Wished They Were Honest, 88–112.

[66] Knapp Commission Report, 52.

[67] Armstrong, They Wished They Were Honest, 228–238.

[68] Thomas Leuck, "Officer Jailed for 33 Years Wins Parole," *New York Times*, September 23, 2007.

[69] Knapp Commission Report, 13–14.

[70] Ibid., 14-15.

[71] Knapp Commission Report, 15.

[72] Francis X. Clines, "Knapp Panel's Recommendation a Touchy Problem for Mayor and Governor," *New York Times*, August 27, 1972.

[73] Armstrong, They Wished They Were Honest, 236-237.

[74] Paul Montgomery, "Mayor Proposes Statewide Chief to Battle Graft," *New York Times*, August 28, 1972.

[75] Although he was elected as a Republican in 1965, Lindsay lost the Republican primary for mayor in 1969 and won reelection on the Liberal and Independent lines. In 1971 he became a registered Democrat, and he unsuccessfully pursued the Democratic nomination for president in 1972.

[76] "Hogan, District Attorney 32 Years, Dies," *New York Times*, April 3, 1974.

[77] Patrice O'Shaughnessy, "Frank Hogan Keeping Things Decent and Proper," *New York Daily News*, November 2, 1999.

[78] Robert D. McFadden, "Burton Roberts, 88, Tom Wolfe's Model Judge, Dies," *New York Times*, October 25, 2010.

[79] Maas, *Serpico*, 244–249.

[80] Stanard's conviction was reversed by the New York Court of Appeals because the content of portions of Serpico's testimony, none of which was Serpico's fault. *People v. Stanard*, 32 N.Y.2d 143 (1973). Stanard was convicted again on retrial, without testimony by Serpico and after Roberts had become a judge. "Suspended Officer Again Found Guilty of Perjury Charge," *New York Times*, November 27, 1974.

[81] Ibid., 266–267.

[82] Knapp Commission Report, 256.

[83] Ibid., 252.

[84] Francis X. Clines, "Knapp Panel's Recommendation a Touchy Problem for Mayor and Governor," *New York Times*, August 27, 1972.

[85] Edward C. Burks, "Roberts Is Off to Fast Start in his First Day on Bench," *New York Times*, January 3, 1973.

[86] Maurice Carroll, "Hogan 'Still Bitter' Over Nadjari Post," *New York Times*, October 12, 1972.

[87] Frank Lombardi, "Very Unwise Move if Gov.-elect Andrew Cuomo's Special Prosecutor Can Trump District Attorneys," *New York Daily News*, November 18, 2010.

[88] Carroll, "Hogan 'Still Bitter' Over Nadjari Post."

[89] Anthony Lewis, "The Zeal of Maurice Nadjari," *New York Times*, March 28, 1976.

[90] David Burnham, "Man for the Fight Against Corruption," *New York Times*, September 24, 1972.

[91] Tom Goldstein, "Nadjari Says Grumet Inquiry on Charges Was 'No Investigation,'" *New York Times*, June 24, 1976.

[92] Armstrong, They Wished They Were Honest, 237-238.

[93] Leuci, All the Centurions, 316.

[94] Ibid., 316.

[95] Anthony Lewis, "The Zeal of Maurice Nadjari," *New York Times*, March 28, 1976.

[96] Selwyn Raab, "The 'Superprosecutor,'" *New York Times*, December 24, 1975.

[97] Marcia Chambers, "Murtagh Is Dead; New Delay Likely in Nadjari Inquiry," *New York Times*, January 14, 1976.

[98] Marsha Chambers, "Court Overturns 1974 Convictions of Mackell and 2 Others," *New York Times*, March 29, 1975.

[99] "Col. Gardner is Removed," *New York Times*, December 23, 1900.

[100] Frank J. Prial, "Ex-Prosecutor Charged With Molesting Girl, 10," *New York Times*, August 18, 1983.

[101] Jane Perlez, "Miss Holtzman Beats Rosen in Brooklyn's D.A. Primary," *New York Times*, September 23, 1981. Gold's executive assistant lost the Democratic primary to Elizabeth Holtzman and she won the general election.

[102] "Gold Gets Probation in Fondling of Child; Agrees to Treatment," *New York Times*, October 21, 1983.

[103] Knapp Commission Report, 66.

[104] Ibid., 65.

[105] Murphy and Plate, *Commissioner*, 237–238.

[106] Nunziata's partner Louis D'Ambrosio pleaded guilty and cooperated in connection with the payoff. "Detective Here Gets 2 Years on Probation for Taking Bribe," *New York Times*, October 2, 1973. Nunziata was also connected with inquiries into the disappearance of a large amount of heroin from the police property room in the so-called French Connection case. James Markham, "Lost-Drug Signouts Laid to One Person," *New York Times*, February 10, 1973.

[107] Morris Kaplan, "24 Police Indicted in a Bribery Case," *New York Times*, May 3, 1972.

[108] Daley, Prince of the City, 282.

[109] Detective Carl Arguiluz of the Special Investigations Unit cooperated and pleaded guilty to tax charges in both the SDNY and the EDNY. To avoid counting him twice, his prosecution is counted only in the SDNY because more of his misconduct seemed to take place in Manhattan. Daley, *Prince of the City*, 293.

[110] Several of the officers of the 7th Division who were prosecuted by Bronx D.A. Roberts were also charged federally in New Jersey as well as the Bronx because the drug ring that the cops

allegedly protected operated in both the Bronx and New Jersey. Two of the 7th Division officers, Edwin Miller and Jerome Smollen, were charged only in New Jersey. All of those charged in New Jersey were found not guilty at trial. "City Policemen Cleared in Bribe," *New York Times*, April 3, 1973.

[111] David Burnham, "16 Officers Draw Jail as Grafters," *New York Times*, October 4, 1973. Green's conviction was later reversed because her conviction at trial lacked legally required corroborative evidence for accomplice testimony. *People v. Cona, et al.,* 49 N.Y.2d 26 (1979). Another female defendant, Det. Anne King of SIU, was indicted later in the scandal. She had medical and psychiatric issues that likely resulted in dismissal of charges, but a final disposition could not be obtained. Marcia Chambers, "Big Bank Deposits Laid to Ex-Detective's Wife," *New York Times*, May 18, 1974; Max H. Seigel, "Extortion Is Laid to Ex-Detectives," *New York Times*, December 24, 1975.

[112] Max H. Seigel, "Appellate Court Upsets 11 Police Payoff Convictions," *New York Times*. January 19, 1978.

[113] People v. Renaghan, 338 N.Y.S.2d 125 (App. Div. 1972).

[114] Gregory Jaynes, "Police Inspector Johnson Acquitted in Bribery Case," *New York Times*, March 17, 1978.

[115] U.S. v. McClean, Codelia, and Viera, 528 F.2d 1250 (2d Cir., 1976).

[116] The Sergeants' Club case brought by the special prosecutor in Queens alleged that the sergeants received regular payoffs from more than one thousand sources, described as gambling, prostitution, bars, and legitimate businesses, according to the special prosecutor. Those defendants are listed with the legitimate activity entry because the high number of sources suggests that many legitimate businesses were involved, although it is not possible to distinguish between the lawful and unlawful sources based on the information available. Marcia Chambers, "10 Police Sergeants Held as Graft 'Club' Members," *New York Times*, August 9, 1974.

[117] Knapp Commission Report, 18.

[118] Daley, *Prince of the City*, 289–291.

[119] "Detective Here Gets 2 Years on Probation for Taking Bribe," *New York Times*, October 2, 1973.

[120] Det. Dominic Butera of SUI died from a heart attack while charges were pending. Sgt. John Hourigan of SUI, according to Daley, drank himself to death in the year after he was charged. Ptl. Eugene McDaniel of the 13th Division was convicted at trial, sentenced to one year in jail, died while his appeal was pending, and his conviction was ordered to be vacated. Ptl. Francis

Reilly was convicted at trial, sentenced to six years incarceration, and died while his appeal was pending, but his conviction was not disturbed. The three suicides previously described all occurred preindictment, so cases against those persons are not counted as prosecutions. Daley, *Prince of the City*, 296; People v. Cona, et al., 401 N.Y.S.2d 239 (2d Dep't 1978); David Burnham, "16 Officers Draw Jail as Grafters," *New York Times*, October 4, 1973.

[121] Since sentencings came under both state and federal practices, the maximum sentence was used to make fairer comparisons. For instance, Ptl. Brendan Conway was sentenced to a term of one to seven years under state law. The maximum sentence that he could serve (seven years) was used to classify his sentence in the "over five years" category. By comparison, Det. Edward Codelia was sentenced to nine years in the federal system. That sentence was also in the "over five years" category, although federal parole practices at the time made it likely that he would serve no more than about three years. "Two Ex-Policemen Sentenced," *New York Times*, October 25, 1973.

[122] "Policemen Guilty of Taking Bribes," *New York Times*, June 10, 1973.

[123] Selwyn Rabb, "Cobb Dismisses 19 Former Plainclothes Officers in a Bribery Scandal," *New York Times*, November 19, 1974.

[124] People v. Cona, et al., 401 N.Y.S.2d 239 (2d Dep't 1978). Hynes would go on to serve as a special prosecutor, city fire commissioner, and Brooklyn D.A.

[125] Morris Kaplan, "24 Police Indicted in a Bribery Case," *New York Times*, May 3, 1972.

[126] Selwyn Rabb, "Cobb Dismisses 19 Former Plainclothes Officers in a Bribery Scandal," *New York Times*, November 19, 1974.

[127] Eighteen of the twenty-one defendants went to trial. Two defendants had their cases severed, and another defendant committed suicide.

[128] David Burnham, "16 Officers Draw Jail as Grafters," *New York Times*, October 4, 1973; Selwyn Rabb, "Cobb Dismisses 19 Former Plainclothes Officers in a Bribery Scandal," *New York Times*, November 19, 1974.

[129] People v. Cona, et al., 49 N.Y.2d 26 (1979).

[130] People v. Cona, et al., 435 N.Y.S.2d 30 (2d Dep't 1981). Another convicted defendant, Sgt. Raymond Melnick, had his three-year sentence reduced to probation in a separate ruling by the Appellate Division. People v. Melnick, 443 N.Y.S.2d 1021 (2d Dep't 1981). Ptl. Richard White was also convicted at trial and sentenced to three years, but a decision reducing his sentence to probation could not be located. It seems highly unlikely that his sentence of incarceration went undisturbed. Another defendant, Ptl. Leslie Liburd, had his case severed before the big trial

because his attorney was ill. The Kings County Clerk's Office states that all records are sealed, which suggests that charges were dismissed.

[131] Arnold H. Lubasch, "10 Police Named on Bribery Count," *New York Times*, November 5, 1971.

[132] Lacey Fosburgh, "Phillips, a Knapp Witness, Indicted in Two Murders," *New York Times*, March 21, 1972; Armstrong, *They Wished They Were Honest*, 227–228.

[133] Arnold H. Lubasch, "Knapp Witness on Corruption Accuses Hogan of Persecution," *New York Times*, May 16, 1972.

[134] Arnold H. Lubasch, "Policeman Cleared in Corruption Case," *New York Times*, May 18, 1972.

[135] Marcia Chambers, "U.S. Drops Charges against 8 Policemen in Knapp Hearings," *New York Times*, October 2, 1974. Records of the Clerk's Office for the Southern District of New York confirmed that charges against Lt. Andrew Cassel were dismissed in December 1974. Charges against the eight other defendants were dismissed in January 1974.

Chapter 8

The Mollen Commission–Era Scandal

> Who's going to catch us? We're the police. We're in charge.
> —Corrupt cop Bernard Cawley in testimony before the Mollen Commission, when asked if he had been afraid of being caught.[1]

Matters of municipal finance, labor unions, and crime control intersect in New York, perhaps never so graphically as in June 1975 when one of the police unions published its "Fear City" booklet. Featuring a death skull on its cover, the booklet gave over-the-top warnings to tourists that New York City was far too dangerous to safely visit, while union officials gave similarly strong warnings to city officials not to lay off cops.[2] Concerns about finances and crime nagged the city in the post-Knapp years and were the topics of two of New York's best-known tabloid headlines. In October 1975, the *New York Daily News* took dramatic license to proclaim, "FORD TO CITY: DROP DEAD" when President Gerald Ford rejected prospects for additional federal assistance for the city to stave off bankruptcy.[3] Although President Ford would approve federal loans to the city just two months later, the fiscal crisis turned Abe Beame into a one-term mayor. Almost fifteen years later in September 1990, during what would become the city's record year for homicides, the subway murder of a young Utah tourist traveling with his family prompted the *New York Post* to plead, "DAVE, DO SOMETHING!" to Mayor Dinkins in a front-page headline.[4] The crime issue made Dinkins the city's next one-term mayor.

The near-bankrupt and crime-ridden city staggered in the post-Knapp years. Fiscal reforms and oversight imposed on the city by Washington and Albany stripped the already ineffectual Mayor Beame of much of his authority. The Son of Sam serial killings terrified city residents from the summer of 1976 until the arrest of David Berkowitz in August 1977. If New

Yorkers needed reminding of the fragile state of their city, the electrical blackout in July 1977 set off days of looting and the destruction of large swaths of the city's poorer neighborhoods. Mayor Beame still tried to run for reelection in 1977, but the crowded field of challengers in the Democratic primary resulted in the nomination of Ed Koch. Koch's outspoken support for the death penalty conveyed a tough stance on crime and separated him from most of the other Democrats seeking the nomination.[5] He easily won the general election.

The cheerleading side of Koch's personality wanted to lead a comeback for the city. Seen with the benefit of hindsight, the city may have had no place to go but up. The outflow of jobs seemed to end in 1978, and commercial construction picked up while vacant office space declined. The business community appreciated the city's moves toward austerity, and New Yorkers might have become more accepting of the higher college tuitions and transit fares and hospital closings that came with this austerity.[6] Although the city's population bottomed out in the 1980 census at barely over seven million, the 1965 reform of immigration laws had encouraged some 800,000 immigrants to settle in the city in the 1970s in what would become the beginning of population growth for the next four decades.[7] The "white flight" to the suburbs and elsewhere continued, but the trend seemed less dire for the future of the city when immigrants were eager to arrive and reinvigorate city life.

The city remained one in transition, but the transitions finally showed signs of becoming more favorable. Grand Central Terminal avoided Pennsylvania Station's fate when the U.S. Supreme Court upheld the city's landmarks law in 1978.[8] Although less than a step forward for music or culture, the opening of the Studio 54 disco in 1977 signaled a return of celebrity and money to nightlife in midtown Manhattan. Hundreds of thousands of spectators filled Central Park for the September 1981 concert by New Yorkers Paul Simon and Art Garfunkel. A couple

of months later, Mayor Koch achieved the unprecedented endorsement of both the Democratic and Republican parties and won reelection with an also unprecedented 75 percent of the vote. After the decades of deindustrialization and suburbanization that drained the city, the 1980s brought trends in national and international finance more favorable to the city. The Dow Jones average more than doubled despite crashes and recessions, and Wall Street employment and salaries boomed. Perhaps most surprisingly, the probusiness Koch administration delivered surpluses in the city's budget by 1982.

The sticking point continued to be crime. Despite all of the credit given to Koch for reviving the city, the Koch years (1978–1989) never saw crime significantly reduced for any sustained period. Fear of crime hung over the December 1985 shooting of four black men on a subway car and the ensuing trial's not guilty verdict for white New Yorker Bernhard Goetz. Homicides dropped a bit in the early 1980s and then jumped to record-high levels with the crack epidemic later in Koch's tenure. Koch still steamrolled opposition from the Republican and Liberal party candidates in 1985 and broke his own margin of victory record with a stunning 78 percent of the vote in his reelection, but his third term went downhill quickly. Democratic bosses who were Koch allies became embroiled in corruption scandals.[9] Although the corruption charges never directly implicated Koch, the public sentiment turned less tolerant of Koch's abrasiveness. Koch's blunt talk, which seemed appealing early in his mayoralty, became particularly ill-suited to sensitive race issues. Racial tensions in the city grew with the deaths of black men Willie Turks (1982), Michael Griffith (1986), and Yosef Hawkins (1989) at the hands of white mobs in neighborhoods of Brooklyn and Queens. Koch harshly, almost gratuitously, criticized Democratic presidential hopeful Jesse Jackson in 1988. His popularity dropped, he

suffered a minor stroke in 1987, and by 1989 he faced opposition in the Democratic primary as he sought a fourth term as mayor.

David Dinkins defeated Koch with surprising ease in the 1989 primary. Rudy Giuliani, who built his reputation with prosecutorial success against mobsters and city politicians, gained the Republican nomination. In his primary victory speech, Dinkins announced, "I intend to be the toughest mayor on crime this city has ever seen."[10] Dinkins's vulnerability on the crime issue, however, quickly became clear. Giuliani gathered some support for being more conservative than Dinkins, and some for simply being the candidate who was not black, but the heart of Giuliani's appeal was the prospect that he would address crime more strongly than Dinkins. It was almost enough: in an overwhelmingly Democratic city, Dinkins barely squeaked by political novice Giuliani in November 1989 in the closest election in city history. Dinkins stepped into a difficult situation. After he was in office for only a few months, *Time Magazine*'s cover story summed up the status of the city: "The Rotting of the Big Apple."[11]

Stubbornly high crime, the crack epidemic, a national recession, and some weakening of the city's economy in the early 1990s stood in the way of Dinkins achieving the role of racial healer that many New Yorkers expected. His relations with the police department worsened as he pushed for establishment of a civilian review board to handle complaints against cops.[12] On September 16, 1992, some ten thousand off-duty cops gathered in City Hall Park in a disruptive rally in opposition to the proposed review board. Demonstrators damaged property, blocked Brooklyn Bridge traffic, and many used racist chants and signs directed at the mayor.[13] While any police misconduct at the demonstration was quite separate from the conduct to be revealed in the already-brewing corruption scandal, some elements ran through both, including the image of

city cops as angry white guys alienated from many of the citizens they served, and the determination of the mayor to take action against the police.

The Triggering Event

The nature of the city's police corruption had changed. The Knapp Commission, departmental discipline, administrative reforms, and hundreds of prosecutions had disrupted the "pad" of regular, largely vice-based payoffs to police. The state lottery and other forms of legal wagering discouraged a return of gambling as a vice that might revive the pad. Prostitution, pornography, and other sex-related businesses were altered by changes in public morality, enforcement decisions, and technology that made those industries less likely to return to pad payoffs. More generally, the pad lost fashion because it was too risky. Reporter Mike McAlery noted, "The organized pad of the Knapp era was too organized. Too many people knew you were involved. Any one of those people who knew what was going on could rat you out."[14] Lardner and Reppetto observed that while the NYPD managed to keep its revamped post-Knapp vice squads relatively clean, the "kids in the patrol cars were the ones who succumbed" to post-Knapp police corruption.[15]

Perhaps motivated by a concern that better opportunities for corrupt activity would not develop by waiting for assignment to a plainclothes or narcotics unit, some of the "kids in the patrol cars" looked for more immediate corrupt opportunities. The NYPD adhered to the professional model of policing that kept most cops in patrol cars. Like other people who worked in the city, officers increasingly lived in suburbs outside of the city, adding to the alienation of the mostly white cops from minority communities. The city's streets in some neighborhoods had unprecedented levels of crime and drugs. Particularly as crack cocaine came to the city by the

mid-1980s, street-level drug dealing involved huge amounts of illicit money to tempt those patrol officers.

One highly publicized case in 1986 set the tone for the latest variety of police corruption, although it did not trigger a wider scandal. The investigation started off like clockwork: a drug dealer in Brooklyn's 77th Precinct was caught with a large stash, he offered to give up the cops he paid off, police took him to Brooklyn D.A. Elizabeth Holtzman, she sent him to Special State Prosecutor Charles Hynes (one of the successors to the deposed Maurice Nadjari), and he agreed to cooperate to gather evidence against the cops.[16] The 77th Precinct covered the struggling Bedford-Stuyvesant neighborhood, where the precinct cops often engaged in serious crimes of opportunity that included stealing money and drugs from drug dealers and making fake 911 calls that allowed them to enter and loot apartments and businesses. Investigators confronted one of the cops, Henry Winter, and he agreed to cooperate. Winter and his partner recorded other corrupt cops, leading to indictments of thirteen officers in what became known as the Buddy Boys case.[17] The prosecutions did not go as well as the investigation: most of the charged officers gained dismissals or trial acquittals, four pleaded guilty or were convicted, and one committed suicide.[18] One of the officers who pleaded guilty served one year in prison and then took a part-time job at John Jay College while on work release and appeared in an anticorruption videotape to be shown to police cadets.[19]

The Buddy Boys case garnered headlines, but it never gained traction as a triggering event. In fact, almost the opposite occurred. Anticorruption efforts seemed to recede. Charles Hynes served as the special prosecutor for four years, but he moved on to noncorruption work toward the end of his tenure. He would later grumble that the NYPD stopped providing critical corruption reports to prosecutors in the late 1980s.[20] The Office of the Special Prosecutor shrank

from a staff of 160 under Maurice Nadjari to a staff of 43 under Helman R. Brook, the largely forgotten final special prosecutor. Governor Mario Cuomo disbanded the Office of the Special Prosecutor in 1990 and promised to transfer equivalent funding to the district attorneys' offices for their respective anticorruption units.[21] After the actual triggering event for the next cyclical scandal popped up just two years later, some critics lambasted the special prosecutor's office for having allowed the corruption problem to fester.[22] Perhaps worse, the Mollen Commission would accuse the commanders of the NYPD's Internal Affairs Division of intentionally impeding efforts to uncover more widespread corruption after the Buddy Boys case.[23]

What would become the triggering event occurred on May 6, 1992, with the arrests of some city cops on Long Island. Just one week earlier, on April 29, Los Angeles cops received not guilty verdicts on charges of beating civilian Rodney King. Mayor Dinkins and the NYPD understandably took credit for keeping New York quiet while Los Angeles burned. At the same time, however, Suffolk County (Long Island) officers were wrapping up a drug investigation that implicated NYPD Officer Michael Dowd, then of the 94th Precinct (Greenpoint in Brooklyn). Suffolk County's investigation had taken just a few months. An arrested drug dealer in Islip gave information that led to a wiretap that revealed cocaine coming from a retired NYPD officer. More wiretaps ensued that revealed the involvement of Dowd and other officers.

A front page *Daily News* headline called Michael Dowd "the dirtiest cop in NY."[24] Dowd collected thousands of dollars weekly for protecting drug dealers in the 75th Precinct, committed armed robberies of drug dealers and drug locations, and delivered drugs from Brooklyn for distribution on Long Island (the subject of his arrest) and elsewhere. Dowd was even accused of committing the on-duty kidnapping of a competing drug dealer who was then killed by the organization that paid off Dowd.[25]

Beyond the shocking nature of his corruption, one aspect of Dowd's conduct stood out: he took few pains to conceal his activities. Fellow cops, supervisors, and some members of the department's Internal Affairs Division all knew about at least some of Dowd's conduct.[26] Limousines would pick him up at the precinct for gambling trips to Atlantic City. Dowd would drive his new red Corvette sports car from his expensive home on Long Island to his precinct in the poor East New York neighborhood.[27]

An unrepentant Dowd explained some of his thinking in the 2014 documentary *The Seven Five*. He joined the NYPD in 1982 and started taking money from motorists or apartments as opportunities arose after about a year assigned to the 75th Precinct. As he became bolder in his misconduct, other cops did not want to be his partner. Only when Dowd was able to recruit a reliable partner did the corruption rise to a level to include, for instance, $8000 payments every week from a drug dealer. Dowd's boldness came partly from his confidence that cops would never turn him in, partly from his contention that other cops appreciated his fast action when they needed help on the street, and partly from his increasing liquor and cocaine abuse. Dowd served twelve years in prison for his crimes. The partner whom Dowd induced into corruption, Kenny Eurell, eventually cooperated after the Suffolk County arrests and was never prosecuted. Dowd still cannot understand how Eurell could have informed on another cop. Eurell recalls that when he cooperated and tried to gather evidence against Dowd, he finally felt like a cop again.[28]

The Suffolk County arrests needed a nudge to become the triggering event. The institutional structure of the NYPD, all the way up to the commissioner's office, wanted to avoid a major police scandal.[29] The Suffolk County arrests of Dowd and the others might have become an embarrassing, isolated miniscandal involving a few bad cops, maybe even more containable than the Buddy Boys affair. But the depth of Dowd's corruption had left a trail of departmental

tolerance of corruption that was difficult to conceal. In 1986, Sgt. Joseph Trimboli took an assignment in a Brooklyn unit that reported to the Internal Affairs Division, where he saw repeated complaints of Dowd's corruption that were swept under the rug. Trimboli's frustrations and the department's obfuscations continued for years.[30] Trimboli feared that the response to Dowd's arrest in Suffolk County would not address the severe deficiencies of the NYPD's anticorruption program. On June 15, 1992, after the Dowd case slowly began to fade from news headlines, the *New York Post* ran a front-page story setting forth Trimboli's story of how the department allowed Dowd to operate. The effect was immediate: both the NYPD and Mayor Dinkins took steps to address, or at least appear to address, the problem.

The Response

On the same day as the publication of the *New York Post* story about the department's pathetic efforts to deal with Dowd, Police Commissioner Lee Brown ordered a full study. Recruited by Mayor Dinkins to be commissioner, Brown enacted administrative and patrol changes that some observers credit with starting the city's crime drop, but crime was still so high that he received little credit at the time.[31] Instead, he drew much hostility from the rank and file of the NYPD. Some cops distrusted the African American commissioner, others disliked the proposed civilian review board, and many derided Texas-native Brown as "out of town Brown" for his frequent travels outside of the city. The responsibility for the study fell on First Deputy Commissioner Raymond Kelly.[32]

By the time the report was issued a few months later, Brown had resigned as commissioner, citing his wife's ill-health, and Kelly became commissioner.[33] The 161-page report blamed most shortcomings on the fractured structure of multiple units in the department

that all had some anticorruption responsibilities. Essentially, the report contended, the Dowd case fell between the cracks because the organizational structure happened to have a lot of cracks. Kelly proposed elevation of the Internal Affairs Division to the higher status of a bureau. None of the officers who had done little to stop Dowd were publicly disciplined because, Kelly said, it would not be "productive."[34] Kelly's report was seriously criticized at the time, and the Mollen Commission's report bluntly rejected its findings.[35] After leaving the NYPD, Lee Brown went on to serve as the White House "drug czar" and the mayor of Houston, Texas.

The police commissioner's attempt (first by Brown, then by Kelly) to control the narrative after the *New York Post* story came as too little and too late. The cautious, deliberative Mayor Dinkins did not have a plan in place when the *Post* story broke, perhaps waiting to see if the department's study might be an adequate response. One week after the *Post* story, however, the mayor suggested that he might appoint a single investigator to look into police corruption. A few days later, on June 25, 1992, he changed his strategy and appointed a commission to investigate police corruption.[36] The mayor's decision for a five-member, mayor-appointed corruption commission seemed borrowed directly from the Knapp-era model.

Mayor Dinkins's deputy mayor for public safety, Milton Mollen, had recently stepped down to take a lucrative position in private practice. Mollen had not even departed his own farewell party at Gracie Mansion when the mayor asked him to lead the police corruption inquiry. Mollen, a former state court judge, had previously earned some favorable response from the NYPD because he presided over the Dinkins administration's hiring of new officers, and Dinkins thought that background might make the inquiry more palatable to cops. Mollen reluctantly agreed and, according to Dinkins, Mollen himself decided on the model of the five-member commission and selected the commissioners.[37]

With Dinkins coming up for reelection in 1993 and the crime-focused Rudy Giuliani preparing to challenge him again, Mollen took pains to attempt political balance in naming commissioners. Harold Tyler, a Republican, was a federal judge after a stint doing civil rights work in Robert Kennedy's Justice Department. Herbert Evans, a Democrat and the only African American commissioner, had served as the state's chief administrative judge. Harold Baer, who carried a Liberal Party label, was a former federal prosecutor and served as the director of the controversial Lindsay-era Police Review Board.[38] The fifth commissioner position went to Betsy Barros, a Latina and a high-ranking assistant D.A. in Brooklyn. Barros would have been the only woman to break into the boys' club of membership in the commissions appointed in the cyclical scandals, but she had to resign a few days later due to a conflict of interest because she had minor involvement with an investigation of corrupt cop Dowd.[39] Barros was replaced by Roderick Lankler, a white Republican and veteran prosecutor who had served as one of the post-Nadjari special state prosecutors before that office was abolished.

Keeping the informal tradition of adopting the chairman's name going back to the Lexow Committee, the New York City Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department quickly became known as the Mollen Commission. The commissioners were not paid, and the large staff of investigators and analysts combined with staff paid out of the commission's budget and others on loan from various agencies and law firms. Mollen hired Chief Counsel Joe Armao on the recommendation of Manhattan D.A. Robert Morgenthau.[40] The Deputy Chief Counsel position went to Leslie Cornfeld, making her the most prominent woman in the history of the scandal-related commissions. Cornfeld assumed a particularly high profile as one of the main interrogators at

Commission hearings—the cable television news service NY1 had just gone into service and devoted many hours to live coverage of the hearings.

Perhaps determined to avoid the relatively lavish spending of the Office of the Special State Prosecutor during Nadjari's tenure, Mollen sought to keep the commission's budget tight. He turned down Park Avenue office space despite the convenience of proximity to his own law office. And he stunned city administrators when he returned $200,000 in unspent funds (of the $1 million budget) after the commission's first year of operation.[41]

The Mollen Commission took the opposite approach of the Knapp Commission and hired many former cops as investigators because they were "thoroughly familiar with the operations of the Department, its culture, and the likely sources of corruption," according to the Commission's final report.[42] The Knapp Commission avoided using active or former NYPD officers so investigators would not be tainted or conflicted by the widespread pad-based corruption of the department in that era.

The Mollen Commission decided quickly where to focus its investigative resources. The knowledge of its staff, dozens of interviews, reviews of complaints against cops, and the facts of the Dowd case all pointed to the existence of "pockets of corruption" in police precincts of "high crime" and "an active and open narcotics trade."[43] Commission investigators then decided where to attempt their own proactive investigations. The commission's final report occasionally took caution in describing activities because some investigative matters were ongoing, but the report did not hesitate to criticize the NYPD's corruption investigations in two major areas. First, the report contended that the NYPD's Internal Affairs Bureau took a narrow "rotten apple" approach by identifying individual corrupt cops and ignoring more widespread and complex corruption. The police department would regularly look for patterns and conspiracies in other criminal

investigations, but not in police corruption. The report bluntly attributed the department's approach to its "reluctance to uncover the full extent of police corruption in our City," rather than to any legitimate analysis of corrupt conduct.[44] Second, the report pointed out that proactive investigations like those undertaken by the commission were "sorely lacking from the Department's internal investigations for years."[45] The NYPD simply chose not to look for something it did not want to find, while the commission's report boasted that "whenever we searched for corruption, we found it."[46]

After the commission worked for over a year, Milton Mollen took pains at the first public hearings in September 1993 to place its work in the context of the twenty-year cycles of police corruption scandals. He described the cycles as "scandal, reform, backslide, and fresh scandal" and contended that the cycles were not inevitable.[47] After the expected praising of recent reform efforts by the NYPD and noting that the vast majority of day-to-day operations of the department were conducted honestly, Mollen emphasized that "investigations and prosecutions that temporarily attract the public's attention" could not resolve corruption issues.[48]

Mollen borrowed from the Knapp playbook with televised hearings featuring testimony from corrupt cops, and the hearings even took place in the same meeting room of the New York City Bar Association on West 44th Street that hosted the Knapp hearings.[49] Just as the Knapp hearings generated controversy with the testimony of corrupt cop Bill Phillips, the Mollen hearings used Michael Dowd. In both instances, the commissions made deals with the devils of police corruption and then clashed with other agencies that tried to take actions against those devils. The telegenic and articulate Dowd lived up to his "dirtiest cop in New York" reputation with unsettling testimony about committing robberies and dealing drugs. In July 1994, shortly after the publication of the Mollen Commission's final report, Dowd appeared before U.S.

District Court Judge Kimba Wood for sentencing on his earlier guilty plea. Milton Mollen supported Dowd's request for leniency with a letter to Judge Wood setting forth how Dowd provided "testimony and cooperation so valuable to the Commission and the public." The federal prosecutor on the case, however, strongly disagreed with Mollen's position and called Dowd's purported cooperation "untruthful and evasive." Judge Wood leaned more toward the prosecutor's position and sentenced Dowd to fourteen years, just one less than the available maximum.[50] Perhaps having learned from the unfavorable results in the Knapp era from using Bill Phillips, no prosecutor called Michael Dowd to testify at a trial.

As reprehensible as Dowd was, he was upstaged in the televised Mollen Commission hearings by the thuggish ex-cop Bernard Cawley. Cawley testified in rough street language that he was known to other cops and his superiors as "the Mechanic" because of his skill in "tuning up" (beating) people. According to his testimony, Cawley and other cops in the Bronx used lead-lined gloves and other instruments to beat people whom they encountered on illegal raids of supposed drug locations. The cops kept the money and sold the drugs, guns, and other property that they found. Cawley participated in these raids hundreds of times in his four years in the Bronx before his 1990 arrest on gun-running charges. Of neighborhood residents who hated the police, Cawley testified, "You'd hate the police too if you lived there."[51]

Dowd's sentencing may have shown an unavoidable tension between the interests of an investigative commission and those of a prosecuting authority. Assembling the Mollen Commission had seemed much more deferential to prosecutors, particularly the five district attorneys, than the record of the Knapp Commission. Whitman Knapp essentially questioned the integrity of the district attorneys from the beginning when he suggested before the Knapp Commission had even met that the D.A.s could not handle police corruption cases.[52] The Knapp

Commission's final report hammered that point home by endorsing the position of special prosecutor. Governor Rockefeller and his aide Maurice Nadjari caused further strain by excluding the district attorneys from the decision making and then choosing a very strong model for the special prosecutor. In contrast, Milton Mollen accepted D.A. Morgenthau's recommendation for the key position of chief counsel, and Commissioner Harold Tyler was a close friend to Morgenthau.[53] The Mollen Commission's final report went out of its way to state, "This Commission does not believe that local or federal prosecutors are reluctant to investigate and prosecute corrupt police officers today. Nor have we found that the public typically questions prosecutors' ability to aggressively pursue such cases. On the contrary, we found that both federal and local prosecutors were eager for us to refer evidence of police corruption to their offices and that they are moving forward based on our evidence."[54] The report concluded that the NYPD corruption problem needed an independent monitor, not a special prosecutor.

The Mollen Commission's report drew attention to what it called "probably the most common form of police corruption facing the criminal justice system": the police practice of making false statements in testimony and in documents such as affidavits, complaints, and reports.[55] The report popularized the cop-lingo term "testilying" for giving untruthful versions of the circumstances of arrests and seizures. The untruths, which usually were crimes themselves as perjury or false statements, often covered up more serious offenses of illegal searches, thefts, payoffs, and brutality. The commission's report specifically described the phenomenon of officers who "stubbornly defend" the propriety of making false statements if it meant supporting charges against a person who was actually committing crimes.[56] Interestingly, this emphasis in the commission's report on perjury and other police falsification came at a time when prosecutors did not increase the use of the crime of perjury to charge cops in the scandal-related

prosecutions. The commission focused, however, on cops who lied in the regular course of what they thought was their business. Prosecuted perjury cases, on the other hand, often involved prosecutors setting perjury traps, as critics might call them, where prosecutors summoned the cops before a grand jury and elicited perjurious testimony. Court decisions on granting immunity and the right to remain silent limited those perjury traps in the Mollen-era prosecutions.

Although the Mollen Commission found that many cops rather routinely committed these acts of falsification, it found almost no evidence of cops giving false testimony in exchange for payoffs to have cases dismissed. The final report suggested that such corruption would be foolhardy because of the risk of being caught by supervisors, prosecutors, or the courts. Instead, a corrupt arrangement at the time of making or not making an arrest had a much better chance of avoiding detection.[57] This represented a shift from, for instance, the "elastic testimony" of the Lexow era or the "turn out" of the Curran era, when cops would make arrests and then tailor their testimony to cause case dismissals.[58]

In another area of contrast with prior eras, the Mollen Commission drew a connection between police corruption and police brutality. The final report stated, "In sum, we found that cops did not simply become corrupt; they sometimes became corrupt and violent. Until now there has always been a distinction between corruption and brutality. Corruption was about money; brutality was about unnecessary force and abuse of authority. That distinction has in some cases blurred."[59] The report described various forms of brutality. Corrupt cops used brutality in robbing drug dealers or in illegal raids of supposed drug locations. Other cops saw the beating of drug dealers and other criminals as a justifiable imposition of punishment. More generally, the report found that corrupt cops were more likely to be brutal cops, even when the acts of brutality were not connected to corrupt activities.[60] The commission blamed past NYPD

commanders for failing to address brutality issues and optimistically noted that past deficiencies appeared to have been overcome. [61] Sadly, the case of Abner Louima (1997) and others would belie the commission's optimism.

Following the public hearings in late September and early October 1993, the Mollen Commission issued an interim report in late December 1993. By that time, Rudy Giuliani was the mayor-elect and outgoing police commissioner Ray Kelly issued an unusually extensive list of legislative proposals on police corruption matters.[62] Political maneuvering ratcheted up in the election season and the changeover in city hall. Kelly's proposals seemed designed to steal some thunder from the interim Mollen recommendations and to present his tenure in a better light after the Mollen findings hit. With the twenty-page interim report, Mollen clearly wanted his commission to exercise some influence over decisions that might be made as the Giuliani administration took office. During the mayoral campaign, and true to his prosecutorial background, Giuliani endorsed a revival of the Office of the Special State Prosecutor to handle corruptions cases. Concerns arose that Giuliani might reject any findings of the Dinkins-appointed commission.[63]

Based on the hearings and the investigation, the Mollen Commission's final report in July 1994 made its most significant contribution by bluntly describing the new permutation of police corruption. The report declared that the bribery-based pad no longer existed, having been replaced by "a new and often more invidious form of corruption." The cops no longer just closed their eyes to activities such as bookmaking; instead they were "acting as criminals, especially in connection with the drug trade." The criminal opportunities for the cops were both fortuitous and the result of "created opportunities and premeditated, organized effort."[64]

The final report also confirmed that this new strain of police corruption occurred most commonly in neighborhoods or precincts with high crime and extensive drug activity. If a major component of the new style of corruption was robbing or taking payoffs from drug dealers, then the corrupt activity necessarily happened in the areas where the drug dealers operated. The older style of corruption flourished partly because of the element of public support for certain vices, including sports betting, playing the numbers, or drinking on Sundays. Those activities occurred across ethnic, racial, and socioeconomic lines in a variety of neighborhoods. So the older corruption involved larger numbers of citizens participating in the illegal vices, as well as more cops tasked to enforce laws in those areas. Fewer cops engaged in the new style of corruption, and they focused their crimes on the most-troubled city neighborhoods. The largely minority residents of those neighborhoods already had to deal with more than their share of poverty, substandard housing, high unemployment, high crime, and drug dealing. On top of all that, they had to deal with out-of-control cops who made most of the neighborhood problems worse by aggravating racial tensions, undermining police legitimacy, and endangering instead of protecting citizens. As ex-cop Cawley pointed out, no wonder the residents hated the cops.

As for creating outside oversight of the NYPD, Giuliani eventually moved away from the special prosecutor model, but the political bickering only intensified as the city council overrode Giuliani's veto in early 1995 by creating an independent monitoring commission with members appointed equally by the council and the mayor.[65] With strong support from Manhattan D.A. Morgenthau, Giuliani countered by issuing an executive order to create a commission with less funding and more limited powers, and with all members appointed by the mayor.[66] The Commission to Combat Police Corruption continues to the present, although considered an underfunded and ineffective anticorruption tool by many observers.[67]

The Prosecutors

The three most active prosecutorial agencies in charging cops in the Mollen era were the U.S. Attorney's Office for the Southern District of New York and the district attorney's offices for New York County (Manhattan) and Bronx County. All three were led by prosecutors who held their offices for unusually long time periods. Robert Morgenthau became D.A. in 1974 and served until 2009, for an even longer tenure than his predecessor Frank Hogan. Robert Johnson became Bronx D.A. in 1989 and serves to the present, the longest tenure in the history of that office. Mary Jo White was sworn in as U.S. Attorney in 1993 and served until 2002, a tenure in that position that might have been matched only by Robert Morgenthau in the 1960s if his two stints in office are combined.

Morgenthau seemed determined to avoid the dismissive treatment that Frank Hogan received in the Knapp era, particularly since Morgenthau himself received some of that treatment after he took over from Hogan while the scandal was still hot.[68] Morgenthau made sure that he had a seat at the table as Mayor Dinkins formulated a response to the triggering event, and he resisted proposals for establishing a new special prosecutor. As the Mollen Commission was just getting started in late 1992, Morgenthau created a new unit to handle corruption cases. The timing of the move suggested that Morgenthau sought to counter the opinion that district attorneys could not adequately prosecute cops, and that he would not give the Mollen Commission grounds to reach the anti-D.A. conclusions reached by Knapp Commission. He even moved the new unit to satellite office space in SoHo to increase its appearance of independence from the cop-dependant routine work of the main office.[69]

Morgenthau came from an extraordinary background of political prominence and public service. His grandfather was the last U.S. ambassador to the Ottoman Empire, best remembered for his dire warnings about what became known as the Armenian Genocide. His father was Franklin Roosevelt's long-serving secretary of the Treasury, architect of New Deal programs, and wartime strategist. Morgenthau himself grew up in wealth in New York City, attended prep school at Deerfield and college at Amherst. In distinguished navy service in World War II, Morgenthau survived a ship-sinking attack by the Germans in the Mediterranean and a Japanese kamikaze attack in the Pacific.[70] After Yale Law School and partnership in a prominent law firm, Morgenthau was appointed U.S. Attorney by President Kennedy in 1961. He left office to unsuccessfully run for governor against Nelson Rockefeller, then was promptly reappointed as U.S. Attorney by JFK. His political elbows sharpened as he refused to voluntarily submit his resignation to President Nixon, usually considered a routine matter when the White House changes party. He finally resigned in 1970, then bided his time in private practice until winning the position of New York County District Attorney in the 1974 special election held after Frank Hogan's death.

Morgenthau received some criticism for a slow response by his office to police corruption of the 1980s, but that time period was unique because of the preeminence of the special prosecutor.[71] The Buddy Boys misconduct of that era did not happen in Manhattan, although hindsight showed that other Manhattan-based corruption flourished. As the Mollen Commission mulled the option of another special prosecutor, all five city district attorneys spoke in opposition, with Morgenthau specifically recommending that an auditor be appointed every four years by the mayor to review the police department's anticorruption efforts.[72] Morgenthau and Mollen clashed publicly when Morgenthau wanted to bring perjury charges against an

officer who had testified anonymously before the Mollen Commission about corruption in the 30th Precinct. Mollen spoke harshly of Morgenthau: "It's no secret in law enforcement circles that he is jealous and envious of the success of the Mollen Commission. Corruption had gone on in that precinct for years and he was unable to uncover it. That's a simple fact."[73] Morgenthau relented and agreed not to prosecute if the officer resigned from the department.

Mary Jo White was born in Kansas City, Missouri, in 1947 and moved as a child to McLean, Virginia, when her father was transferred to Washington in his job as an attorney for the Social Security Administration. After college at William and Mary, she received a master's degree in psychology from the New School in New York, but she never used it professionally as she enrolled at Columbia Law School the following year. After a few years in private practice at a prestigious law firm, she joined the Southern District in 1978 as an Assistant U.S. Attorney. She moved up the ladder as the chief of the appeals section of that office, then bounced back to private practice in 1981. She returned to public service as the First Assistant U.S. Attorney in Brooklyn in 1990, served briefly as Acting U.S. Attorney of that office, and received her appointment to the Southern District from President Clinton in March 1993. White's aggressive nature became most apparent in terrorism cases (the World Trade Center had just been bombed), but she brought it as well to the brewing police scandal as the Mollen Commission was in the middle of its work.[74] White contrasted sharply with her more restrained predecessor, Otto Obermaier, who served as U.S. Attorney from 1989 to 1993.[75] Since Obermaier's predecessor was Rudy Giuliani, the pendulum of prosecutorial aggressiveness seemed to swing back and forth.

Several circumstances drove White's strong moves on police corruption. White's boss, Janet Reno, brought a state and local law enforcement background to her appointment as

Attorney General, and she encouraged a larger federal role in fighting crime, which traditionally had been the job of only state and local authorities. The widening NYPD scandal, of course, created immediate opportunities for high-profile cases for a prosecutor looking to build her credentials. In addition, the shift in the nature of police corruption as documented by the Mollen Commission justified more federal involvement. Mary Jo White said in 1994, "Now that police corruption has taken the form of drug-dealing, federal civil rights laws and the Internal Revenue Service come in very handy."[76]

Perhaps most important to the question of how many cops were prosecuted for what offenses, White developed a contentious and competitive relationship with D.A. Morgenthau. Morgenthau's office was the most storied prosecutor's office in the nation, while White's office was the preeminent federal agency. They existed a few hundred yards away from each other with overlapping jurisdiction over the most coveted territory in the nation. Both prosecutors pushed the boundaries of their offices. Expected conflicts rose to new levels when Morgenthau moved boldly into complex white-collar offenses and Wall Street financial crimes, traditionally seen as exclusively the feds' domain. The Mollen-era police corruption prosecutions showed an unusual number of defendants prosecuted by both White's and Morgenthau's offices—more commonly an indication of conflict rather than cooperation.[77] When Morgenthau ran for reelection in 2005, White even stepped up to chair his primary opponent's campaign. Morgenthau won easily.[78] White went on to head the Securities and Exchange Commission.

Robert Johnson was born and raised in the Bronx. He graduated from James Monroe High School and the City College of New York before serving in the U.S. Navy and attending New York University Law School. After three years with the Legal Aid Society, then New York City's version of a public defender's office, he joined the Bronx district attorney's office as an

assistant district attorney and remained there for eight years. He served about two years by appointment as a trial court judge before winning election as the Bronx district attorney in 1988. Johnson moved into the vacuum left by the sudden death of long-serving and well-regarded Bronx D.A. Mario Merola. The death of Italian-American Merola became part of a transfer of political power in the Bronx to Hispanic and African American domination. The Bronx was already a "majority minority" borough, so the election of a Hispanic borough president and the African American Johnson as D.A. seemed overdue.[79]

Johnson inherited a difficult situation. The Bronx was the city's poorest and most crime-plagued borough and had been in decline for decades. Its district attorney's office was considered the least prestigious of the city's prosecutors' offices. Bronx juries were notoriously reluctant to convict criminal defendants, contributing to Bronx prosecutors regularly having the city's lowest conviction rate.[80] The police department often did not handle the challenges of high crime and the minority population well, a problem emphasized by the sort of misconduct revealed by the Mollen Commission. Johnson walked a tightrope between performing his duties as the chief law enforcement official of the Bronx and attempting reforms called for by his constituents. When he attempted to ban plea bargaining by his office in 1992, critics predicted gridlock in the courts.[81] His opposition to the death penalty in 1996 caused the governor to take the case of a murder of a police officer away from his office.[82] With police antagonized by Johnson's refusal to prosecute cases based on certain types of stop-and-frisks, and with continued low conviction rates by his office, some political leaders moved toward seeking Johnson's resignation.[83] The state legislature even voted in 2014 to remove the prison complex on Riker's Island from the Bronx D.A.'s jurisdiction as requested by the union of corrections

officers, although the governor vetoed the measure.[84] Through it all, Johnson has become one of the longest serving prosecutors in state history with over twenty-seven years on the job.

The Prosecutions

The Mollen-era scandal produced prosecutions of seventy-nine police officers according to information disclosed by research. That was a large reduction from the Knapp era (219), but still considerably ahead of the Lexow era (47), the Curran era (17), the Seabury era (18), and the Gross era (35). Unlike the Knapp era, the Mollen era did not have the special state prosecutor looking for cases and spurring the district attorneys. More importantly, the nature of the corruption revealed by the Mollen Commission involved fewer officers—the Mollen "pockets" compared to the Knapp "pad." There were simply fewer prosecutable cases to go around, but the cases often involved more serious wrongdoing.

Cases tended to result in more guilty pleas and fewer trial acquittals than in the earlier scandals. With the exception of the 48th Precinct cases in the Bronx (described below), very few prosecutions ended with not guilty verdicts at trial. The more serious nature of the offenses might have meant that prosecutors took more care in bringing cases. Prosecutors used the sort of troublesome witnesses that upset prosecutions in the 1950s (Harry Gross) and the 1970s (Bill Phillips) less often. Also, more cops faced simultaneous federal and state charges, largely because Mary Jo White (federal) and Robert Morgenthau (state) refused to yield prosecutorial turf. Officers faced with charges from multiple jurisdictions might have been more likely to plead guilty. Overall, guilty pleas resolved a higher percentage of cases than in the previous scandals.

Eight different prosecutorial agencies handled the scandal-related prosecutions. The district attorneys in Brooklyn and Staten Island brought no cases. The Suffolk County D.A. was active, having jurisdiction over the arrests from the triggering event. A breakdown of the number of cases handled by each office needs to recognize that twelve of the prosecuted cops were charged by both the U.S. Attorney for the Southern District of New York and a district attorney's office, usually Manhattan. Most of those cases were resolved by guilty pleas, perhaps because the prosecutor in each jurisdiction insisted on a guilty plea for the statistics of that office. The federal charges tended to involve drugs and civil rights violations, which might be regarded as more serious than the common state charge of perjury. The list in table 8.1 credits those combined state and federal prosecutions to the federal agency (the SDNY) in order to avoid overcounting the number of police officers prosecuted. The number of SDNY cases also prosecuted by a D.A.'s office is noted parenthetically.

One case noted in table 8.1 was prosecuted by the city's Special Narcotics Prosecutor (SNP). That position was created by the state legislature in 1971 to address the city's drug problem in a uniform manner with citywide jurisdiction, and its functions became more critical after the 1973 enactment of the so-called Rockefeller Drug Laws. The city's five elected district attorneys vote to name the SNP.[85] The case noted in the table involved an officer arrested in 1995 with six pounds of cocaine. That officer was previously implicated, but not prosecuted, in the 48th Precinct investigation, so including the subsequent drug case seems appropriate as a scandal-related prosecution.[86]

TABLE 8.1 Prosecuting authorities in Mollen-era cases

Agency	Officers charged	
U.S. Attorney SDNY	26	
U.S. Attorney EDNY	5	
Manhattan district attorney	14	(and 10 jointly with SDNY)
Bronx district attorney	23	(and 1 jointly with SDNY)
Queens district attorney	3	
Suffolk County	6	(and 1 jointly with SDNY)
Rockland County	1	
Special narcotics prosecutor	1	
Total	79	

The single case from Rockland County involved a cop from the 48th Precinct in the Bronx who was arrested on drug charges in 1993 in Rockland County and then cooperated in the wider investigation of others in the precinct.[87]

The ethnicity count based on surnames becomes even less precise than in previous scandals. Those with identifiably ethnic surnames might belong to families that had been in the United States for a few generations with marriages that dilute a surname-based measure of heritage. Nevertheless, the trend toward more diversity in the NYPD is clear. The Irish name count among the prosecuted cops (17 or 22%) held fairly close to the Knapp-era numbers, and the Italian name count (14 or 17%) dropped a bit compared to the Knapp era. The clearest development was the increase in names of apparent Hispanic origin. Some 19 of the 79 prosecuted cops (24%) had Hispanic surnames, outpacing their corrupt Irish and Italian brethren. Although not measurable by names and unidentified in routine court record and press accounts, African American officers seemed to increase in representation among the prosecuted cops. The 30th Precinct in Harlem had a very large cluster of cases (the "Dirty 30") that appeared to include

a significant number of African American officers. Newspaper coverage from the 48th Precinct had photographs of the defendants showing that two of the sixteen charged officers were African American.[88] As for gender diversity, just two of the seventy officers charged were female.

Important developments of the Mollen-era scandal are reflected in the ranks of the prosecuted defendants (table 8.2). The lowest-ranking officers dominated the prosecutions to a degree that exceeded the earlier scandals. Of the seventy-nine prosecuted cops, seventy-two (91%) were patrolmen[89] and seven (9%) were sergeants. No detectives, captains, or inspectors were charged. Only 53 percent of the defendants in Knapp-era cases were patrolmen. Although the Gross (77%) and Seabury (88%) eras showed high percentages of patrolmen charged, both included prosecutions of high-ranking inspectors.

TABLE 8.2. Ranks of police charge in Mollen-era prosecutions

Rank	No. charged	% of total
Patrolman	72	91
Sergeant	7	9
Total	79	100

The bottom-heavy prosecutions were consistent with the nature of the corruption uncovered by the Mollen Commission. The Mollen-era corrupt cops tended to commit their crimes of theft, robbery, break-ins, and drug dealing as outgrowths of their assignments in high crime neighborhoods. They kept their spoils and did not have to "kick upstairs" to higher-ranking officers as part of an organized payoff system.

The lack of prosecutions of upper-ranking cops may show a weakness in criminal prosecutions as an anticorruption tool. While the most overt corrupt activity of the Mollen era was committed by street cops, much of their activity certainly occurred with the knowledge of supervisors. The Mollen Commission's report found a "widespread breakdown in supervision" in the department and attributed much of the failure to a "willful blindness" by supervisors.[90] The blindness may have been due to a fear of reporting corruption and the unspoken understanding that the department did not want another corruption scandal. In any event, and no matter what significance the Mollen Commission attributed to supervisory shortcomings, no supervisor was prosecuted for inaction that condoned the illegal conduct of the street cops. The criminal law's general requirement that a defendant commit the elements of a crime with affirmative acts might have made such prosecutions impossible. Failing to act against corruption, by itself, is not a crime.

Determining the primary charged conduct (table 8.3) against a prosecuted cop was particularly complicated by the frequent charging by both federal and state offices, but some patterns emerged in comparisons with earlier scandals. Drug and larceny charges were much more common than in the earlier scandals, consistent with the Mollen Commission's descriptions of cops stealing from drug dealers. Also consistent with the Mollen Commission's descriptions, the crime of assault was charged to an extent not seen since the Lexow and Seabury eras.

TABLE 8.3. Primary charged conduct in Mollen-era prosecutions

Conduct	No. of cases	% of total
Perjury/false statement	18	23
Drugs	15	19
Larceny	12	15
Assault	9	12
Civil rights	9	12
Extortion/bribery	8	10
Obstruction of justice	3	4
Firearms	2	2
Robbery	1	1
Burglary	1	1
Fraud	1	1
Total	79	100

The most important pattern was the clear emergence of civil rights violations as among the strongest charges available to federal prosecutors to use against police. Although the laws date back to Reconstruction, they were used only sporadically against state officials and were subjected to decisions by the U.S. Supreme Court that narrowed their scope.[91] By the 1960s, the broader civil rights movement encouraged greater federal involvement and the Supreme Court's *Price* decision brought some clearer guidelines for prosecutors thinking about using the laws.[92] The Knapp era saw the first use of civil rights laws against cops in scandal-related prosecutions, but on an extremely limited basis. The charges became more common in the Mollen era and contributed to the ascendancy of federal police prosecutions.

Perhaps the clearest indication of how prosecutions of police corruption changed in the Mollen era comes in the breakdown of the activity underlying the charged police misconduct.

The scandal prosecutions from the Lexow era of the 1890s through the Gross era of the 1950s were propelled largely by misconduct based on either prostitution or gambling. Those cases evaporated in the Mollen era. The 1970s Knapp-era prosecutions involved rather wide-ranging underlying activity—particularly gambling, drugs, and legitimate business. In the Mollen era, drugs dominated the scandal, as shown in table 8.4.

Table 8.4. Primary underlying activities in Mollen-era prosecutions

Activity	Cases	% of total
Drugs	60	76
Other civilian activity	9	11
Unknown civilian activity	6	8
No civilian activity	3	4
No information	1	1
Total	79	100

The "other civilian activity" category covers a variety of civilian conduct that showed no apparent illegality. For instance, three cops from the 48th Precinct in the Bronx were charged with assaulting an individual singled out in a crowd from which someone called out "police brutality" while the cops were trying to make an arrest and clear the area. All three were found not guilty at a bench trial.[93] In another example, a sergeant from the 52nd Precinct in the Bronx was charged with beating a young passenger in a car that the sergeant stopped. The sergeant was found not guilty in a bench trial.[94] "Unknown civilian activity" refers to situations where the civilian conduct, if any, was not specified. An example was the prosecution of three cops from the 109th Precinct in Queens for the theft of money from a wallet in an apartment, described

below. In the "no civilian activity" category, cops were charged with corrupt conduct that had no civilian involvement. For instance, a sergeant from the 40th Precinct in the Bronx pleaded guilty to insurance fraud for falsely reporting his car stolen. He was swept up in the cluster of 48th Precinct cases because he abandoned his Jeep Cherokee in that precinct, which was also where his girlfriend worked.[95]

The Mollen era saw the first widespread use of the sting tactic of investigations by which targeted cops were deceptively offered an opportunity to commit a crime. The complexity of the tactics varied. Some stings were fairly straight forward integrity tests, while others involved more elaborate setups. For purposes of entry in table 8.2, if the sting was designed to simulate a drug-related scenario, the resulting prosecution was considered to have drug-related underlying activity although, of course, there was no genuine civilian drug activity in the case. The police department had so many locations for sting operations that Commissioner Bratton quipped that he had become a major real estate operator.[96]

In an example of a rather elaborate sting, in 1994 (soon after the release of the Mollen Commission's interim report) the Internal Affairs Bureau rented a shabby apartment on a block of heavy drug-dealing activity in the 48th Precinct in the Bronx.[97] The cooperating cop from the 48th Precinct who had been arrested on drug charges in Rockland County (noted above and described further below) brought other cops to the location to "arrest" an undercover officer posing as a drug dealer. The other cops stole $1000 from a closet in the apartment. The ruse apartment stayed active for a few months, catching cops making arrests without cause, committing other thefts, and "testilying" about where contraband was found. A blunder by the Internal Affairs Bureau, however, ended the sting when investigators planted a gun in the apartment that had been planted there before. The cop who recovered the recycled gun noticed

another cop's initials on the weapon, which was a common practice to identify a firearm in police inventory.[98] Prosecutions arising from the apartment are categorized as drug-related in table 8.4.

In the dispositions of prosecuted cases, an important trend continued from the Knapp era. The percentage of cases that resulted in convictions (60%) continued to rise. This is the sought-after conviction rate that many prosecutors pursue relentlessly. It is the statistic most commonly cited to measure the success of a prosecutor's office. Concern about the conviction rate can create a reluctance to charge cases that are difficult to prove as well as a disinclination to dismiss charges without getting a conviction of some sort. While it seems clear that prosecutors of the Mollen era were becoming more successful by the conviction-rate measure, it should be noted that for the unit of analysis of the individual prosecuted cop, any conviction counts as a conviction regardless of whether the same cop was not convicted on other charges. For example, Officer Michael Kalanz of the 48th Precinct received a not guilty verdict on assault charges in state court but was convicted by his guilty plea on obstruction of justice charges in federal court.[99] His case is counted as a conviction.

Table 8.5 summarizes the dispositions of cases.

TABLE 8.5. Dispositions of Mollen-era prosecutions

Disposition	Cases	% of total
Guilty at jury trial	9	11
Guilty at bench trial	2	3
Guilty plea	37	47
Total Convicted	*48*	*60*
Dismissed	5	6
Not guilty at jury trial	6	8
Not guilty at bench trial	10	13
Total not convicted	*21*	*27*
Unknown disposition	10	13
Total	79	100

In another trend that continued from the Knapp era, an increasing percentage of charged cops pleaded guilty (47%). Before the Knapp era, guilty pleas by charged cops were quite uncommon. In the Mollen era, guilty pleas became the common route for case dispositions. The Mollen era saw more of the factors that can contribute to prosecutors having stronger cases—such as more tapes, more cooperating cops, or more federal cases—and stronger cases can induce defendants to plead guilty.

In the Knapp era, the lengthier sentences of incarceration tended to be those imposed in federal court. At that time, federal and state sentencing schemes were easier to compare. Longer sentences in New York State ("state time") were expressed in terms of minimums and maximums, with parole eligibility commencing after service of the minimum sentence, which was usually one-third of the maximum. Federal sentences did not prescribe a minimum term, but parole eligibility commonly occurred after service of one-third of the imposed sentence.

Therefore, a state sentence of two to six years was comparable to a federal sentence of six years, which is why table 7.5, sentences of convicted Knapp-era defendants, uses the maximum sentence to categorize a defendant's state sentence. The federal Sentencing Reform Act of 1984, however, led to federal sentencing guidelines and the elimination of parole for crimes committed after the effective date.

TABLE 8.6. Sentences of convicted Mollen-era defendants[100]

Sentence	No. of cases
Nonincarceration:	
Probation, cond. discharge, and/or fine	5
Incarceration:	
Less than 1 year	12
1 year	5
1 to 5 years	11
More than 5 years	6
Unknown	9
Total sentenced	48

Sentences that involved no incarceration proportionately dropped from the Knapp era (33 of 94 sentences, or 35%) to the Mollen era (5 of 35, or 14%). This likely resulted from the Mollen era corruption being more serious in nature than in earlier eras, as pointed out often by the Mollen Commission. In addition, the then-mandatory federal guidelines gave judges less discretion to impose noncustodial sentences. Only one of the five noncustodial sentences was from federal court: a sentence of four years probation and six months under house arrest for a cop who cooperated in the 30th Precinct investigation.[101]

Comparing the 30th and 48th Precinct Clusters: Rats and Bench Trials

Prosecutions of cops from the 30th Precinct in Manhattan (Harlem) and the 48th Precinct in the Bronx (Tremont) were by far the largest clusters of cases. In all, thirty-four cops from the 30th Precinct and seventeen cops from the 48th Precinct were charged, totaling almost two-thirds of the Mollen-era scandal prosecutions. The two clusters provided stark contrasts in the outcomes of prosecutions and highlighted how cops caught in the investigation made different choices to suit their predicaments: many 30th Precinct cops decided to cooperate and many 48th Precinct cops chose bench trials.

When the anonymous "Officer Otto" testified before the Mollen Commission, he described a precinct where the cops were particularly out of control. It turned out that Officer Otto was Officer Barry Brown of the 30th Precinct. He had been recruited after completing the police academy to be a field associate, the Knapp-era reform that enlisted cops who would report secretly about activities in their precincts.[102] The program was brilliantly designed, but in hindsight, it did little to prevent misconduct at the 30th Precinct. Instead, it provided the Mollen Commission with a dramatic witness and ruined Officer Brown's career. Brown ended up resigning from the police department, at least in part to avoid prosecution by D.A. Morgenthau for repeated instances of perjury in criminal cases. Both sides had good points. To Mollen and other Brown supporters, Brown simply went along with "testilying" to maintain his cover as a field associate. To Morgenthau, Brown's false swearing crossed a bright line of what a cop should never do and resulted in tainted convictions that Morgenthau had to unravel.[103]

Cops in the 30th Precinct nervously watched Brown's televised testimony. The field-associate program put Brown in the precinct and cops knew there could be others. Worse,

aggressive investigations by the Mollen Commission, Internal Affairs, and various prosecutors could be expected to use cooperators to make recordings and gather evidence. Cops accused their partners of being rats and patted each other down to check for wires.[104] Seeing actual cooperators on TV and imagining more in the station house presented two alternatives to the wrongdoers of the precinct that were not mutually exclusive: either fear the cooperators or join them.

The blue wall of silence suddenly was not so impervious. Of the thirty-four cops charged criminally from the 30th Precinct, eleven chose to cooperate. Sometimes the investigation looked like dominoes falling. George Nova, who was Barry Brown's partner, faced drug charges and decided to cooperate. Nova recorded Officer Alberto Vargas; Vargas recorded officers Ruben Garza and Michael Walsh; Garza and Walsh informed on Officer Blake Struller; Struller recorded Officer William Knox; Knox recorded Officers Theodore Giovanelli and Kevin Kay; Giovanelli and Kay implicated Sgt. Kevin Nannery.[105] From a prosecutorial point of view, this willingness to cooperate allowed more cops to be charged and for the cases to be stronger because cooperators often managed to make recordings. The end result was likely the most successful prosecution of a cluster of cases in the history of the cyclical scandals: twenty-nine convictions (23 by plea, 6 convicted at trial) and only five nonconvictions (three dismissals and two found not guilty at trial) from the total of thirty-four cops charged. Of course, reliance on cooperators still carried risks. The first Dirty 30 case to go to trial ended in a quick not guilty verdict in federal court because the jury did not accept the testimony of cooperating cop George Nova in the case against his former partner, John Arena.[106]

The 48th Precinct cluster of cases, much like the broader scandal, arose from a suburban arrest of an NYPD cop on drug charges. Officer Timothy Zaccardo was supposed to be on duty on a midnight tour in the 48th Precinct in the central Bronx when he was arrested miles away

near his home in Rockland County in late 1993. Zaccardo agreed to cooperate, described major misconduct in the 48th Precinct, and began work with investigators from the NYPD and the Bronx D.A.'s office. A major component of his cooperation brought officers to the seedy "\sting"\ apartment, described previously.[107] Zaccardo's arrest came shortly before the Mollen Commission issued its interim report. The final report did not mention activities in the 48th Precinct in deference to the ongoing investigation.

The crimes by cops in the 48th Precinct were similar to many of those uncovered in the 30th Precinct and elsewhere in the Mollen-era scandal: thefts, perjury, assaults, improper searches, and unlawful arrests based on drug activity in a poor neighborhood. Notably, the 48th Precinct misconduct continued unabated even after the 30th Precinct scandal broke, perhaps suggesting the limited deterrent effect of catching other cops in wrongdoing. When the investigation of the 48th Precinct finally went public, the result made for spectacular theater. Sixteen cops were arrested and handcuffed, mostly in their suburban homes, and paraded before the press before their arraignment at the Bronx courthouse on May 3, 1995. Commissioner Bratton used the arrests as proof that the NYPD and the district attorneys could effectively investigate cops without an independent monitor. Justice Burton Roberts, the blustery ex-Bronx D.A. of the Knapp era, released all of the charged cops despite the prosecutor's request for bail.[108]

In sharp contrast to the dispositions of the 30th Precinct cases, just four cops among the seventeen charged from the 48th Precinct pleaded guilty. Zaccardo pleaded to misdemeanor-level charges in Rockland County, and two other cooperating cops pleaded guilty to felony charges in the Bronx.[109] The fourth guilty plea came from a noncooperating cop in federal court.[110] Two cops were found guilty at bench trials, making a total of only six convicted cops for a conviction

rate of only 35% compared to 85% (29 convictions of 34 charged) for the 30th Precinct cluster. Possible explanations abound for the differing outcomes for the two clusters. The 30th Precinct cases were prosecuted by the powerhouse offices of the Southern District of New York and the Manhattan D.A., while the 48th Precinct cases had the less-storied Bronx district attorney and usually no federal involvement. The 30th Precinct investigation had the falling dominoes of cops choosing to cooperate, but the 48th Precinct investigation may have ended early, perhaps because of the already-vouchered gun planted in the sting apartment. Also, the 48th Precinct investigation's attempts to corroborate the testimony of cooperating cops fell short. Recorded conversations in the sting apartment and in a wired-up car were often inaudible or contained difficult-to-interpret cop talk.[111]

The biggest difference between the 30th and 48th Precinct cases, though, came in the bench trials. Once the charged cops of the 48th Precinct decided not to cooperate and not to plead guilty, they almost invariably chose bench trials. The New York State Criminal Procedure Law, Article 230, grants a near-absolute right for a criminal defendant to waive a trial by jury in favor of trial by a single judge.[112] Choosing the nonjury route seemed especially advisable in the atmosphere of the police scandal and common antipolice sentiment. Bernard Cawley (of the neighboring 46th Precinct, not the 48th) summed up the concern in his Mollen Commission testimony about how residents hated cops. Those same Bronx residents would be called to jury duty.

While it is impossible to say that Bronx prosecutors would have done better with juries hearing evidence against the defendants, they could not have done much worse. Of the eleven charged cops who waived jury trials, nine were found not guilty by the presiding judges.[113] Consistent with the common problem in trials against cops, testifying witnesses had credibility

issues. In the 48th Precinct bench trials, some of the troublesome witnesses were the cooperating cops. Presiding judges delivered not guilty verdicts after finding deficiencies in the testimony of cooperating cops Richard Rivera and James Vasquez, both of whom had their own records of serious illegal conduct.[114] Officer John Lowe had an unusual series of court experiences on assorted charges. He was found guilty by the judge in a bench trial, and then the same judge vacated the conviction due to prosecutorial error. Lowe then had two jury trials end in hung juries, and at another bench trial he was found not guilty.[115] After winning at his bench trial, Officer Lowe said with an insincerity that was clear even in print: "I think it's good that they're cracking down on corruption. But don't let the testimony of the bad guys destroy the lives of the good guys."[116]

The 109th Precinct Cases

Among scandal prosecutions, a relatively minor case arose in the 109th Precinct in the middle class Flushing/College Point section of Queens. It was not part of a large cluster, no civilians were beaten, and no drugs were distributed, but it reflected how a scandal could change business as usual in the NYPD. It also reflected that Mollen-era police corruption was not necessarily limited to high-crime, impoverished neighborhoods.

In February 1993, when the Mollen Commission was still in its formative stages, an Asian man in Queens complained that cops had taken $1,400 from his wallet when four officers responded to his apartment after a false report of a kidnapping. The victim dutifully reported the incident to the NYPD, but the internal affairs unit found the report unsubstantiated.[117] As the Mollen Commission later concluded, the NYPD often did not look diligently for corruption for fear of finding it.

After the Mollen Commission gathered momentum, held hearings, and issued its interim report, the anticorruption efforts of the NYPD started to stir. In early 1994, several officers of the 109th Precinct failed drug tests, including some officers who were at the scene of the $1,400 theft a year earlier, and one of them told investigators about the theft. Investigative activity stepped up further with an integrity test targeted at another of the officers from the $1,400 theft. In January 1995, Officer John Pylyp received orders to transport a supposedly abandoned van back to the precinct. The van was wired for video, and Pylyp stole $200 from a wallet in the van, although he tried to voucher the money a few hours later when he became suspicious. The investigation did not go much further as police union delegates tipped off officers that sting investigations were underfoot. Pylyp's wife complained loudly that investigators threatened to take away medical coverage needed to treat their son's brain tumor in an effort to get Pylyp to cooperate.[118] In fact, it was revealed later that Pylyp did offer to cooperate, but the offer was refused because of his credibility issues. More cautious than the 30th and 48th Precinct investigations, which used virtually any cop regardless of his history, the decision not to use Pylyp effectively ended the possibility of charging more cops in the 109th Precinct investigation.[119]

Pylyp and two others, Anthony Biancaniello and Joseph DiGregorio, were indicted in March 1995 for the $1,400 theft, over two years after the crime and the initial muted response by the NYPD. DiGregorio was already out of the NYPD due to the failed drug test, and he obtained a dismissal of the charges against him. Both Pylyp and Biancaniello pleaded guilty, received probationary sentences, and were dismissed from the police department. The fourth cop, who revealed the theft, was not charged.[120] Although the fallout from the overall scandal prompted drug testing, the abandoned van sting, and revival of the old theft charge, the investigation did not go far. The pocket of corruption in the 109th Precinct was certainly not as deep as the pockets

in the 30th and 48th Precincts. Uncertain is whether investigators thoroughly examined the 109th or if a disinclination to find corruption lingered.

Conclusion

Although the Mollen Commission successfully encouraged district attorneys to step up anticorruption action, an important prosecutorial development was the continued increase in federal involvement. With the trend toward the federalization of criminal law, federal prosecutors handled more cases charging public officials. Also, federal prosecutors took their cue from Attorney General Janet Reno and assumed a larger role in fighting street crime like drug dealing, gangs, and carjacking. The new style of police corruption of the Mollen era gave federal prosecutors both public corruption and street crime in one package. Legally, the big federal development was the freer use of civil rights laws against the cops engaged in the new patterns of corruption.

Despite the final report's criticism of the NYPD's "rotten apple" approach to corruption, the nature of corruption revealed by the Mollen Commission was actually closer to a "rotten apple" model than the "rotten barrel" model of the Knapp era. That is, an individual police officer (the rotten apple) would be engaged in serious misconduct, albeit operating in a conspiracy with other rotten apples. The problem was that the scandal-averse department took little action against the rotten apples. As for a rotten barrel, the Knapp-era rotten barrel contained widespread pad-based corruption. The Mollen-era rotten barrel was more like an accommodating receptacle for the rotten apples' activity in that supervisors did not stop it, the department did not expose it, and the (relatively) honest fellow cops tolerated it.

Corruption based on the lesser vices of gambling, liquor, and prostitution faded in the Knapp era and disappeared in the Mollen era. Even the drug corruption of the Knapp era had some orderliness to it as it joined those traditional vices in supporting pad-based payoffs. The Mollen era broke down the relative orderliness of cops taking payoffs and substituted crimes committed by renegade cops. By that evolution, the Mollen-era scandal elevated the importance of prosecuting the offenders. The meat eaters dominated the corruption scandal, and those cops clearly deserved to be prosecuted above and beyond other sanctions of transfers, dismissals, demotions, subtracted vacation days, or lost pensions. Much of the police wrongdoing was identical to the other serious crimes of drug dealing, thefts, break-ins, and assaults routinely handled by prosecutors. The arguments against prosecuting cops—that the crimes were minor, were best handled administratively, or lacked jury appeal—were spoken less often.

Although the Mollen-era conduct might have been more suited for the sanction of prosecution, prosecutors had not done a good job at uncovering the wrongdoing until the Mollen Commission goaded them to action. The Buddy Boys case should have spun off into more police prosecutions, if not a full-blown scandal. Shocking conditions in the 30th Precinct should not have been allowed to fester. Most of the blame for inaction should fall on the NYPD as it strained to avert its eyes to avoid seeing corruption, as pointed out by the Mollen Commission. The NYPD received complaints that were then investigated halfheartedly (109th Precinct) or intentionally ignored (Michael Dowd). The prosecutors share that blame. The Office of the Special State Prosecutor became less active in the years just before it was dissolved in 1990.

Even with the benefit of hindsight, it is conjecture to suggest that Mollen-era corruption would have been addressed sooner and more aggressively, perhaps even avoiding the need for a full-blown cyclical scandal, if the special prosecutor remained in existence. The special

prosecutor's office was discredited in the Nadjari years and dispirited in its final years, but proper funding and management might have kept it focused on its mission. If nothing else, its continued existence might have continued to do what it did in the Knapp era -- inspire or embarrass the district attorneys to take action in police matters. Instead, the district attorneys did not do enough to shake up the see-no-evil NYPD or aggressively investigate the overt police criminality disclosed by the Mollen Commission.

Notes

[1] "Policing the Police," *New York* Times, October 4, 1993.

[2] Glenn Fowler, "'Fear City' Booklet Rights Again Upheld," *New York Times*, June 18, 1975.

[3] *New York Daily News*, October 29, 1975.

[4] *New York Post*, September 7, 1990. The secondary headline was "Crime-ravaged city cries out for help." New York City had 2,245 recorded homicides in 1990.

[5] Frank Lynn, "Death Penalty a Curious Issue for a Mayoral Race," *New York Times*, September 5, 1977.

[6] Lankevich, *American Metropolis*, 221–223.

[7] New York City Department of City Planning, "The Newest New Yorkers: Characteristics of the City's Foreign-born Population," http://www.nyc.gov/html/dcp/pdf/census/nny2013/nny_2013.pdf; Lankevich, 240.

[8] Penn Central Transportation Company v. New York City, 438 U.S. 104 (1978).

[9] Queens boss Donald Manes committed suicide in March 1986 while he was under investigation. The Bronx's Stanley Friedman was convicted of federal corruption charges in November 1986. Meade Esposito of Brooklyn was convicted in 1987.

[10] "Excerpts of Koch Concession and Dinkins Victory Speech," *New York Times*, September 13, 1989.

[11] *Time Magazine*, September 17, 1990.

[12] James C. McKinley, Jr., "Police Panel: Shadow of 60s Hangs Over Council," *New York Times*, September 16, 1992.

[13] Clifford J. Levy, "Black Officials and Clergy Press Review Plan," *New York Times*, September 21, 1992.

[14] McAlery, Good Cop, Bad Cop, 92.

[15] Lardner and Reppetto, *NYPD: A City and Its Police*, 285.

[16] Mike McAlery, *Buddy Boys: When Good Cops Turn Bad* (New York: Putnam, 1987).

[17] "Buddy Boy" was part of a simple code that the cops used over their radios to coordinate their criminal acts.

[18] "77th Precinct Officer Sentenced to 2½ Years," *New York Times*, February 23, 1988.

[19] Ralph Blumenthal, "Convicted Officer Issues Warning on Corruption," *New York Times*, September 17, 1989.

[20] Martin Gottleib, "Decline Seen in Police Corruption Effort," *New York Times*, June 27, 1992.

[21] Selwyn Raab, "State to End New York City Corruption Office," *New York Times*, January 14, 1990.

[22] See, e.g., McAlery, *Good Cop Bad Cop*, 92-94; Leonard Levitt, "Outside NYPD Monitor? Not Likely Under Kelly," *NYPD Confidential* (October 16, 2006), http://nypdconfidential.com/columns/2006/061016.html.

[23] Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department (Mollen Commission), *Commission Report* (New York: City of New York, 1994), Exhibit 8.

[24] *New York Daily* News, September 28, 1993.

[25] Joseph B. Treaster, "More Allegations Against Accused Officer Emerge," *New York Times*, May 30, 1992.

[26] Mollen Commission Report, Exhibit 8.

[27] Joseph B. Treaster, "Officer Flaunted Corruption, and His Superiors Ignored It," *New York Times*, July 7, 1994.

[28] *The Seven Five*, directed by Tiller Russell, Waltz International Pictures, 2014.

[29] Mollen Commission Report, 70–71.

[30] The Mollen Commission report devoted twenty-three pages to telling Trimboli's story. Trimboli was the titular "good cop" of Mike McAlery's *Good Cop Bad Cop* (1994).

[31] Andrew Karmen, *New York Murder Mystery: The True Story Behind the Crime Crash of the 1990s* (New York: New York University Press, 2000), 100.

[32] George James, "2d Police Inquiry Begins into Drug-Dealing Charge," *New York Times*, June 16, 1992.

[33] Joseph Treaster, "Brown Resignation Highlights High Turnover Among Chiefs," *New York Times*, August 8, 1992.

[34] Craig Wolff, "Kelly Report Stops Short," *New York Times*, November 18, 1992.

[35] Mollen Commission Report, Exhibit 8.

[36] James C. McKinley, "Dinkins Names Police Corruption Panel and Urges Civilian Police Review," *New York Times*, June 26, 1992.

[37] David Dinkins with Peter Knobler, *A Mayor's Life: Governing New York's Gorgeous Mosaic* (New York: PublicAffairs, 2013), 246–248.

[38] Baer went on to a greater level of controversy, which even reached a presidential campaign when he served as a federal judge and suppressed evidence of duffel bags of drugs in 1996. Judge Baer found that the two men who ran away from the duffel bags upon seeing the police would have been expected to do so because residents in the Washington Heights neighborhood understandably distrusted the police, so the conduct was not sufficiently suspicious to justify the seizure of the drugs. President Clinton denounced the ruling, and Judge Baer later reversed the decision after hearing some additional testimony. Joseph P. Friedman, "Harold Baer, Jr., Judge Whose Civil Liberties Rulings Drew Fire, Dies at 81," *New York Times*, May 29, 2014.

[39] Craig Wolff, "Police Corruption Panel Member Quits Amid Questions on Inquiry," *New York Times*, July 2, 1992.

[40] Dinkins, *A Mayor's Life*, 248.

[41] Ibid., 250.

[42] Mollen Commission Report, 11.

[43] Ibid., 11.

[44] Ibid., 13.

[45] Ibid., 13.

[46] Ibid., 14.

[47] Ibid., Exhibit 2.

[48] Ibid., Exhibit 2.

[49] Robert D. McFadden, "Mollen Panel on Police Corruption Will Begin Hearings," *New York Times,* September 18, 1993.

[50] Joseph B. Treaster, "Convicted Police Officer Receives a Sentence of at Least 11 Years," *New York Times,* July 12, 1994. About a year before the Dowd sentencing, Judge Wood was considered by President Clinton to be named U.S. Attorney General, but the proposal faltered in the so-called Nannygate scandal because Judge Wood had used an undocumented immigrant for child care for her son. Janet Reno received the appointment.

[51] Selwyn Raab, "Detailing Burglars in Blue: Violent Search for Booty," *New York Times,* September 30, 1993.

[52] Maurice Carroll, "Panel of 5 Sworn in Police Inquiry: Head Asserts Prosecutors Couldn't Do Thorough Job," *New York Times,* July 30, 1970.

[53] Dinkins, *A Mayor's Life,* 248.

[54] Mollen Commission Report, 50.

[55] Ibid., 36.

[56] Ibid., 38; Carl Klockers describes this police decision making where the end justifies the means as the Dirty Harry problem in "The Dirty Harry Problem," *Annals of the American Academy of Political and Social Science* 452 (November 1980): 33–47.

[57] Mollen Commission Report, 40.

[58] Gardner, *The Doctor and the Devil*, 78–80; Curran Committee Report, 9.

[59] Mollen Commission Report, 45.

[60] Ibid., 46.

[61] Ibid., 50.

[62] Craig Wolff, "In Last Days, Kelly Urges Moves to Diminish Police Corruption," *New York Times,* December 16, 1993.

[63] Selwyn Raab, "Mollen Panel to Recommend Permanent Corruption Board," *New York Times,* December 28, 1993.

[64] Mollen Commission Report, 2.

[65] Jonathan P. Hicks, "Giuliani Considers Creating Own Police-Monitor Panel," *New York Times*, February 1, 1995.

[66] Jonathan P. Hicks, "Giuliani Names His Own Panel to Monitor Police Corruption," *New York Times*, February 28, 1995.

[67] William Rashbaum, Joseph Goldstein, and Al Baker, "Experts Say N.Y. Police Dept. Isn't Policing Itself," *New York Times*, November 2, 2011.

[68] An unelected appointee, Richard Kuh, served briefly as district attorney before the election took place.

[69] Selwyn Raab, "Morgenthau Creates Unit to Root Out Police Corruption," *New York Times*, March 26, 1993.

[70] Leonard Levitt, "Aborn for D.A. or Morgenthau Forever?" *NYPD Confidential*, December 1, 2008, http://nypdconfidential.com/columns/2008/081201.html.

[71] Michael Powell, William Rashbaum, and Benjamin Weiser, "Morgenthau Heads for Door, Legacy Assured," *New York Times*, February 28, 2009.

[72] Steven Lee Myers, "Outside Monitor Endorsed in Police Discipline Effort," *New York Times*, October 8, 1993.

[73] James C. McKinley, "Police Officer Says He Lied on the Stand," *New York Times*, October 30, 1995.

[74] Nicholas Lemann, "Street Cop," *The New Yorker*, November 11, 2013, 44–55.

[75] Obermaier served previously as assistant counsel to the Knapp Commission.

[76] Leonard Levitt, "Police Actions Speak Volumes," *NYPD Confidential*, October 17, 1994.

[77] Of twenty-six cops prosecuted in scandal-related cases by the SDNY, ten were also prosecuted by the Manhattan D.A.

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[80] Mark Uhlig, "A Streetwise Prosecutor," *New York Times*, October 28, 1987.

[81] Ian Fisher, "Bronx District Attorney Moves to Ban Plea Bargains in Felony Cases," *New York Times*, November 25, 1992.

[82] James Dao, "District Attorney Wouldn't Move, Pataki Aides Say, So He Was Moved," *New York Times*, March 22, 1996.

[83] Celeste Katz and Erin Durkin, " Democratic Leaders Are Looking to Bench Bronx DA Robert Johnson," *New York Daily News*, April 27, 2013.

[84] Glen Blain, "Rikers Island Will Remain Under the Jurisdiction of the Bronx District Attorney," *New York Daily News*, December 29, 2014.

[85] "History," City of New York, Office of the Special Narcotics Prosecutor, http://www.nyc.gov/html/snp/html/about/history.shtml.

[86] Christopher S. Wren, "Officer Is One of 6 Indicted in Drug Case," *New York Times*, February 24, 1996. The arrested officer was Antonio Camacho. An older woman who was a codefendant hired a witch doctor to put a curse on Judge Snyder for ordering Officer Camacho held without bail.

[87] Joe Sexton, "Bronx Police Inquiry Depicts a Night Shift Out of Control," *New York Times*, May 7, 1995.

[88] Clifford Krauss, "16 Officers Indicted in a Pattern of Brutality in a Bronx Precinct," *New York Times*, May 4, 1995.

[89] By the 1990s, the NYPD had shifted to referring to the lowest-ranking cop as "police officer" in order to use a gender-neutral term at a time of increasing numbers of women joining the force. For consistency with comparisons to the earlier scandals, the term "patrolman" is still used here.

[90] Mollen Commission Report, 79-80.

[91] Robert J. Spurrier, "McAlister and After: Section 242, Title 18 of the United States Code and the Protection of Civil Rights," *Tulsa Law Review* 11, no. 3: 347- 364, 1976.

[92] United States v. Price, 383 U.S. 787 (1966). The case is commonly known as the Mississippi Burning case after the 1988 film loosely based on the underlying facts.

[93] Jorge Fitz-Gibbon, "Three 48th Precinct Cops Acquitted in Beating Case," *New York Daily News*, February 11, 1997; Clifford Krauss, "16 Officers Indicted in a Pattern of Brutality in a Bronx Precinct," *New York Times*, May 4, 1995.

[94] David M. Halbfinger, "Officer Cleared in Kicking Incident," *New York Times*, March 12, 1998.

[95] Bob Kappstatter, "First Sentence in Cop Scandal," *New York Daily News*, November 15, 1995; Clifford Krauss, "16 Officers Indicted in a Pattern of Brutality in a Bronx Precinct," *New York Times*, May 4, 1995.

[96] Clifford Krauss, "When a House Is Not a Home, Just a Police Sting Parlor," *New York Times*, May 5, 1995.

[97] As an indication of how parts of the Bronx have changed, the phony drug-dealing location at 1980 Daly Avenue is now a tidy multifamily house that sold in 2012 for over $400,000 in the reviving neighborhood. http://www.zillow.com/homedetails/1980-Daly-Ave-Bronx-NY-10460/83177959_zpid/.

[98] John Marzulli and Alice McQuillan, "3 Cops Face Theft Bust," *New York Daily News*, March 28, 1995.

[99] Lizette Alvarez, "Cases Crumble in Prosecution of Officers," *New York Times*, April 13, 1997.

[100] Since sentencings came under both state and federal sentencing practices, the maximum sentence was used to make fairer comparisons.

[101] Lynda Richardson, "Probation for a Former Officer," *New York Times*, November 13, 1996.

[102] Murphy and Plate, *Commissioner*, 237–238.

[103] James C. McKinley, "Police Officer Says He Lied on the Stand," *New York Times*, October 30, 1995.

[104] Andrew Jacobs, "Bad Cop: What Made a Son of Woodside Come to Harlem and Rob It Blind? A Tale from Inside the 30th Precinct," *New York Times*, November 10, 1996.

[105] Leonard Levitt, "Cracks Appear in the Blue Wall of NYPD Silence," *NYPD Confidential*, April 21, 1997. http://nypdconfidential.com/columns/1997/970421.html.

[106] George James, "Prosecutor Says Acquittal Won't Affect Other Cases," *New York Times*, March 3, 1995.

[107] Joe Sexton, "Bronx Police Inquiry Depicts a Night Shift Out of Control," *New York Times*, May 7, 1995.

[108] Chris Oliver and Bob Kappstatter, "Parade of Handcuffed Cops Arraigned in Bronx," *New York Daily News*, May 4, 1995.

[109] "Bronx Officer in Graft Case Pleads Guilty in Rockland," *New York Times*, May 13, 1995; Jorge Fitz-Gibbon, "Ex-Cop Eyes DA Offer in Corruption Case," *New York Daily News*, March

5, 1998; Jorge Fitz-Gibbon, "Ex-Cop Gets 60 Days in Pct Probe," *New York Daily News*, April 7, 1998.

[110] Lizette Alvarez, "Cases Crumble in Prosecution of Officers," *New York Times*, April 13, 1997.

[111] Ibid.

[112] Section 320.10 of the New York State Criminal Procedure Law allows the waiver in all cases except first degree murder, and a judge may deny the application only on extremely narrow grounds.

[113] One cop, Michael Kalenz, was found not guilty in his Bronx bench trial, but then pleaded guilty to federal charges in the Southern District of New York. Alvarez, "Cases Crumble in Prosecution of Officers."

[114] Jorge Fitz-Gibbon, "Three 48th Precinct Cops Acquitted in Beating Case," *New York Daily News*, February 11, 1997; David Kocieniewski, "Four in Troubled Precinct Cleared in Brutality Case," *New York Times*, November 2, 1996.

[115] Leonard Levitt, "Reality Check on Rudy Video," *NYPD Confidential*, December 1, 1997. http://nypdconfidential.com/columns/1997/971201.html.

[116] Kocieniewski, "Four in Troubled Precinct Cleared in Brutality Case."

[117] Clifford Krause, "3 From Queens Precinct Indicted in Theft of $1,400 from Man," *New York Times*, March 29, 1995.

[118] John Marzulli and Alice McQuillan, "3 Cops Face Theft Bust," *New York Daily News*, March 28, 1995; Clifford Krause, "3 From Queens Precinct Indicted in Theft of $1,400 from Man," *New York Times*, March 29, 1995.

[119] Miguel Garcilazo, "Officer's Bid to Expose Pals Nixed," *New York Daily News*, May 5, 1995.

[120] Pete Donohue, "2 Ex-cops Admit Theft," *New York Daily News*, December 19, 1995.

Chapter 9

Discussion and Conclusions

Examination of the circumstances of the six cyclical police scandals and of the related prosecutions of over four hundred cops yielded compelling stories of an evolving New York City and its citizenry, politics, crime, and policing. The research questions in chapter 2 focused on descriptions of the prosecutions and what those descriptions suggest about the past and future of police scandals and the prosecutive remedy.

This chapter divides discussion and conclusions into six topic headings:

1. Cyclical scandals: Past and future
2. Changing times and changing corruption
3. An increasing need for prosecution as a corruption remedy
4. Lessons learned for prosecutors
5. Gambling on the feds
6. A police prosecutor

The discussion areas certainly overlap. The cyclical scandals show the interactions over time of factors that included prosecutors' ambitions, political battles, police functions, community attitudes, social conditions, legislative changes, and technological developments.

Cyclical scandals: Past and Future

After the Knapp Commission hearings of the 1970s, former Bronx D.A. Burton Roberts summed up his thoughts: "Twenty years from now, there will be another police scandal. I cannot

tell you why. I cannot tell you why Halley's Comet comes over the skies every few years, but it does. Corruption will be back, too."[1] His prediction was correct, of course, as the Mollen-era scandal occurred on schedule. Although the six cyclical scandals defy a precise astronomical explanation like Halley's Comet, they may not be as inscrutable as Roberts suggested.

As noted in chapters 3 through 8, each cyclical scandal needed a triggering event. The triggering events were two homicides (Curran and Seabury eras), two newspaper exposés (Gross and Knapp eras), one suburban arrest (Mollen era), and one preacher's sermon (Lexow era). Although each event merited its status as the triggering event, and each was necessary (if not sufficient) for the respective scandals to break, the dissimilarities among the events are notable. Rev. Parkhurst's sermon reflected the particular moral and political conflicts of the 1890s. Jumping ahead a century, Michael Dowd's arrest charges on Long Island were consistent with the turn toward harsh, drug-based criminality by some cops in the 1990s. The newspaper stories as triggering events differed because the Mollen era involved cooperation between the journalist and the Brooklyn D.A. to publicize the scandal, while the Knapp era involved the journalist working surreptitiously with whistleblower cops, to the embarrassment of prosecutors and the police department. The homicides that triggered the Curran and Seabury era scandals had strikingly similar facts (Jewish gambler/gangsters gunned down in midtown Manhattan), but the former immediately touched off the police scandal while the latter caused a political scandal that took a couple of years to arrive at some police corruption.

A variety of types of events have qualified as triggering events. To use a kitchen metaphor, a pressure cooker might explode because of a faulty lid, a broken valve, an absent cook, or some other reason; the point is that the device already contained enough pressure to make explosion a possibility. Leaving the kitchen for the NYPD, every cyclical scandal exposed

ongoing corrupt activity by police. Police corruption continued and evolved through all of the scandals. Back to the kitchen, there was always police corruption in the pressure cooker. It was the response that operated cyclically, not the police misconduct itself.

At times, public figures perceived the need to set in motion the responses to the ongoing corruption. Those public figures had mixed motivations of defensiveness and opportunism. New York State Republicans saw political advantage in the Lexow Committee; the city board of aldermen responded to the attention-grabbing success of the district attorney by appointing the Curran Committee; Governor Franklin Roosevelt guarded his ambitions for higher office with the request for inquiry by the court system that led to the Seabury investigations; the Brooklyn D.A. wanted maximum exposure for his gambling and corruption crusade; and both Mayor Lindsay and Mayor Dinkins appointed commissions to deal with police issues that threatened their political futures. Each decision involved a calculation that a well-publicized investigation of corruption was the appropriate route. The decisions of each era faced possible opposition from a range of sources that included the police department, prosecutors, judges, cops, and politicians.

Consciously or not, decision makers appear to have considered whether enough time had passed since the last major outside scrutiny of police corruption. The opportunistic decision maker might seem selfish in calling for an investigation of cops if a similar investigation was fresh in the public's memory. Or, the defensive decision maker might seem desperate. The question remains, why twenty years instead of, say, ten years or thirty years? Although lacking the astronomical precision of Halley's Comet, twenty years is a common generational measure. NYPD cops retire after twenty years. With a few important exceptions like Samuel Seabury and Rudy Giuliani, twenty years was sufficient time for the cast of characters in each cyclical scandal to substantially change. Demographers use twenty years to describe an entire generation of

Americans in two-decade categories like "Baby Boomers," "Generation X," and "Millenials."[2] Similarly, and as noted in chapter 1, Feinberg sees twenty years as the length of time for a generation dealing with a new police scandal to have forgotten what happened in the previous generation's scandal.[3] With twenty years as the default interval, the decision to empanel the investigative authority created the scandal cycles, not the triggering events and not the police misconduct.

At this writing, the seventh cyclical police scandal is overdue, based on the Mollen Commission being named in July 1992 and issuing its final report in July 1994.[4] Two major reasons suggest that it will not happen. First, a mayor with an eye toward history should avoid naming a commission to investigate cops. All six of the cyclical scandals contributed to the downfall of the sitting mayor. In 1894, Mayor Thomas Gilroy declined to run for reelection in the midst of Lexow Committee hearings.[5] In 1913, Mayor William Gaynor was denied the endorsement of his own Democratic Party after the Lexow Committee filed its report.[6] In 1932, Mayor Jimmy Walker resigned after being caught up in Samuel Seabury's investigations. In 1950, Mayor William O'Dwyer resigned as the Brooklyn D.A.'s investigation entangled him. In 1973, Mayor John Lindsay chose not to run for reelection after the 1972 Knapp Commission Report severely criticized his police department. Finally, in 1993, Mayor David Dinkins lost his reelection bid to ardent police supporter Rudy Giuliani while the Mollen Commission worked on its final report. The last two cyclical scandals featured the only investigative entities named by city mayors. Both Lindsay and Dinkins had taken office with liberal, police-reform agendas that failed to help them survive their police scandals.

Mayor Bill de Blasio may have taken note of the political damage from police scandals. He was elected in 2013 on a strong platform of police reform, and he might have appointed a

blue-ribbon commission to look into the variety of police issues of recent years: use of force, stop-and-frisk, ticket fixing, or crime statistics abuses. That might have qualified as the next cyclical scandal, and it would have been on schedule, but he did not choose that route. Perhaps feeling that he needed neither the guidance nor the delays from waiting for an investigation and report by an appointed commission, the mayor took a series of steps to effect reforms in the police department. For instance, he ignored protests from the largest police union and ended the city's appeals of federal court rulings that directed the NYPD to reform controversial stop-and-frisk practices.[7] The city council followed the mayor's lead and considered its own police reform measures, paying no attention to the precedent that the council's forerunner took the lead a century earlier to appoint the investigative commission of the Curran era.[8]

Second, the nature of police misconduct of the Mollen era militates against the occurrence of another cyclical scandal or, at least, a cyclical scandal that reflects the anti-corruption focus of the cyclical scandals. The organized pad previously described by the Knapp Commission was essentially consistent with the vice-based corruption payoffs of all of the earlier cyclical scandals. For the most part, cops got money from persons involved with liquor, prostitution, gambling, and drugs. The corruption was widespread, even if the earlier cyclical scandals disclosed only a slice of it. With developments that occurred over time and accelerated with the Knapp Commission, traditional NYPD corruption changed. Legalized vices, administrative reforms, cooperating cops, snitching victims, taped evidence, and aggressive prosecutions all contributed to the pad system drying up. The most serious Mollen-era corruption came from the bands of criminal cops preying on both the law breakers and the law abiders in struggling neighborhoods. To use Sherman's categories of police corruption, the Type III pervasive and organized corruption of the Knapp era broke down and regressed to Type I rotten

apples and rotten pockets of corruption in the Mollen era.[9] If the rotten apples and rotten pockets are continuing, they may be adequately handled by the department and the courts without another cyclical scandal.

Changing Times and Changing Corruption

Police corruption goes where the money is. Goldstein defines police corruption as "acts involving the misuse of authority by a police officer in a manner designed to produce personal gain for himself or for others."[10] The personal gain for a corrupt cop might include sexual favors or drugs to use, or even advancement in the department from arrests or seizures based on falsehoods. But personal gain most often means money. The sources of that money evolved over the one hundred years of the cyclical scandals.

The tables in chapters 3 through 8 showing underlying civilian activity indicate where the corrupt cops of each scandal tended to get their money. The sources reflected changes in the city itself. In the Lexow, Curran, and Seabury eras (1890s to 1930s), prostitution was the leading source of money for the prosecuted cops. Numbers might have been skewed toward prostitution in the Lexow era because of the morality theme of Rev. Parkhurst's crusade and in the Seabury era because the prosecutions focused on the NYPD's vice squad. The world's oldest profession certainly did not go away in New York City after the 1930s, but changes came. Mobster Charles "Lucky" Luciano was sent to the upstate prison in Dannemora on prostitution-related charges from his arrest in 1936 following prosecutor Thomas Dewey's crackdown on city prostitution locations.[11] After that, organized crime elements turned away from the risky business of prostitution and depended more on gambling payments.[12] Other factors in the de-emphasis of prostitution as a corruption source were likely as important as organized crime's decisions.

Changes in public attitudes and practices over time certainly made the commercial sex trade a less pervasive industry in the 1990s than it was in the 1890s.[13] Further, advances in communication technologies of pagers, cell phones, and the internet made maintaining a visible house of prostitution less important to the business, resulting in a lessened need for making payoffs to police to protect a particular location. When Thomas Dewey directed the raids on dozens of brothels in 1936, one house that expected to move soon had two hundred change-of-address cards ready to mail to regular customers.[14]

Gambling, perhaps picking up from an organized crime retreat from prostitution, dominated the 1950s scandal and was still prominent in the 1970s. But the legal state lottery decimated neighborhood numbers gambling, legalized casinos in New Jersey took business from city gambling spots, and communication advances took sports betting off the streets. By the Mollen era in the 1990s, gambling was gone and drugs dominated as the sources of money for the corrupt cops.

An Increasing Need for Prosecution as a Corruption Remedy

Prosecutors had their worst time in the first cyclical scandal. Reluctant D.A. Fellows was prodded into prosecuting cops by Rev. Parkhurst and the Lexow Committee. The poor outcomes (only two convictions out of forty-seven indicted cops) supported the conclusion that corrupt cops had little to fear from prosecutors. D.A. Whitman brought more enthusiasm and success to the prosecutions of the Curran era, but he prosecuted such a relatively small number of cops (seventeen) that other cops might not have perceived a real risk of being prosecuted, undermining any general deterrent effect from prosecutions. The same was true in the Seabury era, with just eighteen cops prosecuted.

The decade-after-decade persistence of broad-based, organized payoffs indicated that prosecutions and other remedies were not solving the problem. The Brooklyn D.A. of the 1950s tried to convict a large number of cops and expose others as unindicted co-conspirators in a single case designed to reveal the pervasive gambling pad, but the case collapsed in court and reinforced the notion that cops had little to fear from prosecutions. The tide shifted in the 1970s. The Knapp Commission drew a clear picture of the widespread pad system. From a prosecutive standpoint, an enormous number of cops (219) were charged by a large number of prosecutors' offices that joined the fight. For a corrupt cop to be prosecuted was no longer a remote possibility.

As the organized pad disintegrated and corrupt police conduct evolved into the overt criminality described by the Mollen Commission in the 1990s, prosecutions became crucial as a response to the corruption. The effect of deterrence is notoriously hard to detect, but the goal of retribution from criminal sanctions grew more important as cops acted more like street criminals. The assaults, drug dealing, and constitutional abuses committed in vulnerable neighborhoods by the corrupt cops of the Mollen era were serious criminal offenses that demanded prosecution and the possibility of incarceration more than, say, a corrupt cop of an earlier era who received an extra fifty bucks a week from willing gamblers. With a relatively large number of cops being prosecuted (79 in the Mollen era) and with a lower percentage of the police force actually engaged in the new style of corruption, the likelihood of being prosecuted finally became a real risk and kept open the possibility of a deterrent effect.

Lessons Learned for Prosecutors

The cyclical scandals suggest that police prosecutions have gotten easier. Research found a total of 415 cops prosecuted in the cyclical scandals, and 177 of those were convicted, for an overall conviction rate of 42 percent. Factors that should be noted with that calculation include the occasional spottiness of available information and that about half of the cases came from just the Knapp era. In any event, the 60 percent conviction rate of the Mollen era (48 convicted of 79 prosecuted) was clearly better than any of the earlier eras.

Some of the improvements in the conviction rate can be attributed to prosecutors obtaining stronger evidence that either induced guilty pleas or convinced juries. The Knapp era offered the first extensive use of audio- and video-recorded evidence used in scandal-related prosecutions. The Knapp era also saw an increase in the number of cops willing to cooperate with prosecutors. Those developments of more tapes and more cooperators accelerated in the Mollen era. Prosecutors may have also benefitted from less political interference with their functions. Thankfully, modern prosecutors are not the Tammany-beholden political operatives that they were in the 1890s. With less interference, prosecutors are more able to exercise reasonable discretion about what cases to charge.

A prosecutor's greatest concern may be using a witness who is unable or unwilling to give credible testimony. Critical witnesses against cops in corruption cases are often the persons involved in illegal activities who made payoffs for protection from law enforcement. Those persons may have criminal histories and lifestyles that jurors frown upon, and they may have reasons (fear of prosecution, fear of police retribution) to not tell the truth. Further, cops charged with crimes are likely first offenders (in the eyes of the criminal justice system) and have their jobs and pensions to worry about, so they are more likely to take their cases to trial than nonpolice defendants. A criminal trial means that those vice-purveyor witnesses can be exposed

to aggressive cross-examination. The first cyclical scandal quickly showed that brothel operator Augusta Thurow would not be a believable trial witness, although she had done well in the more comfortable hearings of the Lexow Committee. Mary Goode, "Chile" Acuna, Harry Gross, and others continued as particularly problematic witnesses for prosecutors.

Prosecutors increasingly managed to avoid witness pitfalls. Civilian witnesses with credibility problems can have their testimony corroborated with recorded evidence or with testimony from cooperating cops. With more frequent cooperation from cops, however, the witnesses of concern can be the cops themselves. Prosecutors made wise decisions to avoid trial testimony from the likes of Bill Phillips in the Knapp era and Michael Dowd in the Mollen era. But Mollen-era cooperating cops Richard Rivera and James Vasquez had problems as trial witnesses despite having made tapes that prosecutors hoped would bolster their credibility. Judges presiding over bench trials in 48th Precinct cases repeatedly rejected their testimony and found their former precinct-mates not guilty.[15]

Gambling on the Feds

An important development in the police prosecutions over the history of the cyclical scandals was the increasing involvement of offices besides the Manhattan district attorney. The potential misconduct by the NYPD operates citywide (and beyond), so the participation of the other district attorneys expands jurisdictional coverage across the city. Turf battles between prosecutors that inevitably arise may seem an unproductive use of scarce resources and can appear unseemly if made public. The American system of federalism spawns the multiple offices and agencies in the criminal justice field. In the cyclical scandals, more prosecutors meant more cops being prosecuted. Given the scope of police corruption revealed during the scandals,

prosecuting more cops was an overall appropriate response, although the special state prosecutor of the Knapp era certainly received criticism for being too aggressive.

More particularly, the increased involvement of federal prosecutors changed the landscape of scandal-related prosecutions. Only the Manhattan D.A. brought cases in the Lexow and Curran eras. Federal prosecutors appeared modestly in the Seabury era with two police officers charged with Prohibition and income tax violations. One cop in the Gross era pleaded guilty to a federal tax violation after his state charges were dismissed when the Brooklyn D.A.'s case collapsed.[16] The floodgate opened in the Knapp era with dozens of cops prosecuted federally, largely a result of the expanded use of civil rights laws and drug charges. In addition, every district attorney in the city brought cases and the special state prosecutor had its spectacular, if short-lived, run.

With the Hollywood success of *Serpico* and *Prince of the City* and the political success of Rudy Giuliani, prosecuting local cops became an attractive option for ambitious federal prosecutors. Federal criminal prosecutions were expanding anyway, and Attorney General Janet Reno encouraged a greater federal role in traditionally local criminal matters. In the Mollen era, after the waning of the special state prosecutor, the feds became the most prominent prosecutors of city police corruption. Mary Jo White was more than willing to go toe-to-toe with Robert Morgenthau. Federal conviction rates were high and sentences were long. Federal prosecutors had access to funding and investigative resources that the" locals" could only dream of. Federal cases were resolved in the elegant efficiency of the U.S. courthouses instead of the crowed chaos of the city's criminal courts. Federal prosecutors could offer potential cooperators the choice between draconian drug sentences or the witness protection program. When the feds chose to act and had jurisdiction, they clearly had clear advantages over the district attorneys.

However, the most influential development in modern American law enforcement occurred soon after the close of the Mollen era with the attacks of September 11, 2001. Federal authorities, especially those in New York, focused attention on antiterrorism. Public corruption, of which police corruption is a small slice, is now just the number four priority for the Federal Bureau of Investigation (after terrorism, foreign intelligence, and cyber attacks).[17] If the drug-based strain of police misconduct from the Mollen-era continues, the U.S. Drug Enforcement Administration might be expected to occasionally arrest cops for drug offenses, but public corruption is not part of the DEA's mission.[18] Some federal police prosecutions might arise when an informant mentions cops, cop-related conversations turn up on a wiretap, or instances of highly publicized police use of force give rise to civil rights cases. But federal authorities cannot be expected to monitor police corruption. Future federal involvement in New York police prosecutions on the level of the Knapp or Mollen eras is unlikely. Such a strong federal interest in investigating and prosecuting New York cops may never return, and certainly cannot be counted on.

A Police Prosecutor

With the loss of the special state prosecutor and reduction of the involvement of federal prosecutors, the city's five district attorneys are essentially on their own in deciding whether to prosecute police.[19] That was the status when Whitman Knapp concluded that district attorneys could not or would not adequately investigate and prosecute cops. Granted, the district attorneys were spurred to action in the Knapp era and their productivity in prosecuting cops continued in the Mollen era. But the question remains of whether police prosecutions should be handled by

elected district attorneys on a county-by-county basis, or if there are advantages in creating a more central authority with greater independence.

Under circumstances indicative of the pitfalls of establishing a special prosecutor, New York governor Andrew Cuomo signed an executive order in July 2015 directing that the state attorney general supersede jurisdiction of county district attorneys in "certain matters involving the death of an unarmed civilian … caused by a law enforcement officer." Should there be "significant question" as the whether the civilian was unarmed, the attorney general would have discretion to choose to investigate and prosecute.[20] The order was extremely narrow in scope, and it came in reaction to a series of highly publicized deaths of unarmed civilians caused by police in New York City and elsewhere. Although many hailed the governor's action, some family members of victims complained that the order did not go far enough, police unions added expected protests, and the state's district attorneys' association objected.[21] Serious confusion soon arose over particular cases that the attorney general might or might not take over, requiring the governor to attempt clarifications for the executive order.[22] All five of the city district attorneys objected to the order despite efforts by the governor and the attorney general to assuage them in private meetings.[23]

The city already has multiple agencies with overlapping authority over aspects of police misconduct. The Civilian Complaint Review Board (CCRB) has a tortuous history dating back to the early 1950s, when it was an internal unit of the police department, and it generated particular controversy in the Lindsay administration when a public referendum overwhelmingly rejected adding civilians to the board. The CCRB finally assumed an all-civilian format in 1993. In 2012, the CCRB even gained administrative powers to prosecute some cases of misconduct at police departmental trials.[24] The CCRB is reasonably well funded, can issue subpoenas, and receives

valuable information about police misconduct directly from civilians, but long-term investigations are not practical in its mission.

The Committee to Combat Police Corruption (CCPC) was formed by executive order in 1995 when Mayor Giuliani molded a Mollen Commission reform recommendation to his preferences. The CCPC monitors corruption controls of the NYPD largely by reviewing the work of the department's Internal Affairs Bureau. Even when looking at a hot-button topic like deaths in police custody, the CCPC has stayed within its mandate by focusing on administrative questions of whether officers involved in those cases should file written reports.[25] The CCPC has a prominent group of part-time commissioners (including former Knapp Commission counsel Michael Armstrong), but its resources and its mandate are limited. As a leftover from the Giuliani era, its time appears to have passed regardless of how well intentioned and productive it may have been.

The Department of Investigation (DOI) dates back to reform efforts in the nineteenth century. Although it has handled serious matters of fraud and other abuses in city agencies, its role as an investigative agency in the cyclical scandals was negligible. In 2013, however, the city council established the Office of the Inspector General for the NYPD (OIG-NYPD) within the Department of Investigation. The OIG-NYPD has a sizable staff and a broad mandate to investigate abuses in the department. It overlaps a bit with the complaint-receiving function of the Civilian Complaint Review Board, and it essentially usurps the functions of the Commission to Control Police Corruption. The enabling law for the OIG-NYPD called for the office to "investigate, review, study, audit and make recommendations" about the "operations, policies, programs and practices" of the NYPD.[26] It has no prosecutorial authority.

Having an inspector general for the NYPD represents a dramatic shift in the monitoring of police corruption. The office may be particularly important if the most prominent police controversies continue to move away from traditional corruption to other issues like stop-and-frisk, use of force, downgrading reported crimes, broken windows enforcement, ticketing quotas, and such. Some cops will still need to be criminally prosecuted. Certainly some cops still take payoffs, and some may still break down doors to steal drugs and money. Even the more recent areas of controversy about policing practices that seem noncriminal in nature could give rise to prosecution-worthy cases for perjury or official misconduct. Decisions about police prosecutions may have become more complicated since the days of Whitman Knapp's "The district attorneys can't do it" and Milton Mollen's "Yes they can."

The Knapp-era Office of the Special State Prosecutor was a flawed model that was poorly executed. The city's district attorneys' offices are powerful in politics and law enforcement, and the elected district attorneys often rise above the political fray to administer matters of the justice system in fair, nonpartisan ways. No matter how poorly the district attorneys handled (or avoided) police corruption cases, the tone of the criticism by Whitman Knapp and the commission report was harsh. Insulting the district attorneys might have built momentum for the special prosecutor proposal initially, but it was counterproductive in the long run. Creating a lavishly funded, uber-prosecutor job filled by the aggressive Maurice Nadjari extended the insult of the district attorneys. The end result was that the district attorneys ramped up their efforts to prosecute cops, watched or participated as the special prosecutor came under criticism, and waited for Rockefeller, Nadjari, and other supporters of the office to pass from the scene.

The value of the special prosecutor's office became apparent as it faded for a few years and then was gone in 1990. The police department had retreated into scandal-avoidance mode.

The Buddy Boys case came and went without a big-picture prosecutor piecing together ways to stop similar groups of renegade cops operating in neighborhoods across the city. When the Mollen-era scandal broke, the district attorneys generally handled cases well, as the commission's report anticipated. But the new style of police corruption had been allowed to fester in the absence of an office with the scope, expertise, and mission to detect it and respond.

As the Mollen era ended in the mid-1990s, much of the public attention devoted to the NYPD shifted to the extraordinary story of the city's crime drop. To pick just one of the stunning measures of the crime reduction, the city had a 72% drop in homicides from 2245 in 1990 to only 629 in 1998.[27] The department's crime tracking CompStat system was copied by other cities, top departmental officials wrote books, and service in the NYPD became a resume builder that could lead to the highest jobs in law enforcement across the country.[28] There were problems, however, within what appeared to be the good news about city policing. Some wondered whether the department juggled numbers to keep crime statistics low, and others questioned certain enforcement tactics. The Giuliani and Bloomberg administrations (1994-2013) basked in the continuing crime drop and close scrutiny of the NYPD was not on their agenda. By the 2013 election, the department lost a federal lawsuit challenging the constitutionality of stop-and-frisk tactics purported to be important in controlling crime, and Bill de Blasio was easily elected mayor on a platform that included strong attacks on police practices.[29] A few months later, Eric Garner died when being placed under arrest by police on Staten Island. Many cops responded to the protests and criticisms with a drastic slowdown in issuing summonses and enforcing quality-of-life offenses.[30] While a return to widespread police corruption of the Knapp era payoffs or the Mollen era criminality seems unlikely, detection and response are critical for the other forms of police misconduct ranging up to serious matters of misuse of force. Although the inspector

general position may go a long way in that task, there should be a prosecutive component as well.

A model for a special police prosecutor can be seen in the city's Office of the Special Narcotics Prosecutor. In 1971, Governor Rockefeller signed legislation to create a number of new courts placed in New York City to handle drug cases.[31] Under the plan, the city's five district attorneys would appoint an individual to be the Special Narcotics Prosecutor (SNP) who would have an administrative staff and investigators, while the day-to-day work on cases and court appearances would be handled by assistant district attorneys assigned to the SNP by the respective district attorneys. Ironically, Rockefeller created this D.A.-friendly model for a special narcotics prosecutor almost exactly one year before creating the D.A.-hostile model for the special corruption prosecutor. The office of the SNP has operated since its inception with remarkable stability and relative lack of controversy. Only four persons have served as the SNP in over thirty years.[32] The SNP was created in response to a perceived heroin epidemic, and it has navigated through the passage and later revision of the Rockefeller drug laws, the surge of crack usage, gang wars, open-air drug markets, the expansion of drug treatment alternatives, and calls for decriminalization.[33] The office brought a citywide consistency to prosecuting cases so that similar drug cases would be treated in a similar manner whether occurring in Staten Island or the Bronx. The office developed an understanding of the shifting pattern of drug issues in the city to allow reasoned changes in policies and responses.

The cyclical scandals showed a range of what could be called prosecutorial deficiencies: charging too many cops (Lexow, Knapp), charging too few cops (Curran, Seabury), having too narrow a focus (Seabury, Gross), pursuing flawed cases (Lexow, Gross), and failing to charge superior officers (Knapp, Mollen). Despite the similarities of aspects of the cyclical scandals (the

twenty-year pattern, the triggering event, the outside investigation, the summary report), the prosecutive responses were not consistent. A special police prosecutor would bring better consistency to the prosecutive response for crimes allegedly committed by police. That consistency would not necessarily mean that more cops would be prosecuted. Cops caught in less serious wrongdoing might deserve to be insulated from the decisions of an overzealous district attorney determined to bring police cases. Guidelines and practices for exercising prosecutorial discretion can cull out conduct that technically might be criminal for administrative sanctions without criminal prosecution. A special prosecutor can strike a balance guided by law and impartiality between, for instance, activist organizations that want many cops prosecuted and police unions that want few cops prosecuted.

District attorneys generally handle crimes that stand as discrete incidents, such as a particular burglary, robbery, and homicide. Some police cases can be discrete incidents, such as the use of excessive force in a particular arrest. But prosecutable police cases are often tied to patterns of misconduct. Those patterns were apparent in the routine payoffs from the Lexow era through the Knapp era, and even the more flagrant police crimes of the Mollen era showed repeated conduct that formed patterns. A special police prosecutor can develop the expertise to identify the patterns and take steps without waiting for the pressure cooker to explode in another scandal. In addition, a prosecutor with the expertise to determine who gave implicit orders or who looked the other way might be able to develop charges against higher-ranking police officials along with the usual alleged wrongdoers of lower rank. And if the police misconduct most needing prosecutorial scrutiny has moved away from taking payoffs and toward excessive force or constitutional violations, then a special police prosecutor's experience can bring a consistent, law-based approach to screening and preparing those difficult cases.

All five of the city's district attorneys have specialized units with rather wide responsibilities within which the prosecution of police would fall.[34] The circumstances that were of such concern to the Knapp Commission—that district attorneys relied on city police in most of their day-to-day work–still remain and are simply part of how the justice system works. With a citywide special police prosecutor in place, whistle-blowing cops like Serpico and Durk would not have to wander looking for a prosecutor to hear their complaints. District attorneys might appreciate a mechanism that distances them from the conflicts of interest that Whitman Knapp saw in district attorneys prosecuting cops. While district attorneys tend to reflexively defend their turf, they also may have sensed some relief when federal prosecutors took some controversial police prosecutions off their hands. If the feds have withdrawn from devoting extensive resources to investigating local cops, then another office may need to assume the task. Assisted with investigations by the new inspector general, a special police prosecutor could make reasoned, consistent, citywide decisions about which cops should be brought to court.

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[1] McAlery, Good Cop, Bad Cop, 91.

[2] Philip Bump, "Here Is When Each Generation Begins and Ends, According to Facts," *The Atlantic*, March 25, 2014, http://www.theatlantic.com/national/archive/2014/03/here-is-when-each-generation-begins-and-ends-according-to-facts/359589/.

[3] Lotte Feinberg, "Integrity and Corruption Control."

[4] Mollen Commission Report.

[5] "Thomas F. Gilroy, Ex-Mayor, Is Dead," *New York Times*, December 2, 1911.

[6] Soon after, Mayor Gaynor died while still in office. He had little chance for reelection without his party's nomination.

[7] Dareh Gregorian and Rich Shapiro, "Federal Appeals Court Stops NYPD Unions' Bid to halt Mayor de Blasio's Stop-and-Frisk Deal," *New York Daily News*, February 22, 2014.

[8] Michael Gartland, "Cops Livid Over Proposed "Police Reform" Measures," *New York Post*, June 29, 2015.

[9] Lawrence W. Sherman, "Introduction," 9.

[10] Goldstein, *Police* Corruption, 3.

[11] "Four Vice Ring Big Shots Seized in Dewey Raids," *Brooklyn Eagle*, February 3, 1936.

[12] Ed Reid, "Lucrative Borough Rackets Feed Vast Crime Syndicate," *Brooklyn Eagle*, December 11, 1949.

[13] It is estimated that more than 30,000 prostitutes worked in Manhattan in the 1890s. Richard Zacks, *Island of Vice*, 3.

[14] "Valentine Seeks Way to Curb Vice," *New York Times*, February 5, 1936.

[15] Jorge Fitz-Gibbon, "Sting on Bx. Cops Smarts Most for DA," *New York Daily News*, March 2, 1997.

[16] "Tax Evasion Admitted," *New York Times*, April 19, 1955.

[17] Federal Bureau of Investigation, "Quick Facts," https://www.fbi.gov/about-us/quick-facts

[18] United States Drug Enforcement Administration, "Mission Statement," http://www.dea.gov/about/mission.shtml.

[19] The Attorney General's Office for the State of New York has a Public Integrity Bureau, but it handles few police corruption cases.

[20] Office of the Governor of the State of New York, "A Special Prosecutor to Investigate and Prosecute Matters Relating to the Deaths of Civilians Caused by Law Enforcement Officers." Executive Order No. 147, July 8, 2015.

[21] Noah Remnick, "Cuomo's Order for Special Prosecutor in Police Deaths Is Criticized," *New York Times*, July 8, 2015.

[22] Josefa Velasquez, "Amid Confusion, Cuomo Seeks to Clarify Executive Order," *Politico New York*, September 4, 2015, http://www.capitalnewyork.com/article/albany/2015/09/8575900/amid-confusion-cuomo-seeks-clarify-executive-order.

[23] Fredric U. Dicker, "DAs Meet with Cuomo and Schneiderman on Police-Involved Deaths," *New York Post*, August 2, 2015.

[24] New York City Civilian Complaint Review Board, "History," http://www.nyc.gov/html/ccrb/html/about/history.shtml.

[25] Commission to Combat Police Corruption, "Police Reporting in 'Death in Custody' Cases," City of New York, 2004, http://www.nyc.gov/html/ccpc/assets/downloads/pdf/Police-Reporting-in-Death-In-Custody-Cases-November-2004.pdf.

[26] City of New York, Local Law No. 70 (2013), http://www.nyc.gov/html/oignypd/assets/downloads/pdf/Local-Law-70.pdf.

[27] NYPD Crime Data Warehouse, http://www.nyc.gov/html/nypd/html/home/poa_crime.shtml.

[28] For instance, Bernard Kerik was recruited to head the Department of Homeland Security before other problems developed. Bill Bratton became chief in Los Angeles; Ray Kelly became U.S. Customs commissioner; John Timoney headed police departments in Philadelphia and Miami; and Garry McCarthy became police superintendent in Chicago.

[29] *Floyd, et al. v. City of New York,* 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

[30] Christopher Mathias, "Commissioner William Bratton Confirms NYPD Slowdown," *The Huffington Post*, January 9, 2015.

[31] "Rockefeller Signs Bill on Narcotics," *New York Times*, June 20, 1971.

[32] Frank Rogers (1972–1975), Sterling Johnson, Jr. (1975–1991), Robert Silbering (1991–1997), and Bridget Brennan (1997–present). All except Johnson had their primary previous experience with the Manhattan D.A.'s Office.

[33] Office of the Special Narcotics Prosecutor for the City of New York, "History," http://www.nyc.gov/html/snp/html/about/history.shtml.

[34] The Richmond County District Attorney (Staten Island) has a Special Case Unit; the New York County District Attorney (Manhattan) has a Public Integrity Unit; the Kings County District Attorney (Brooklyn) has a Public Integrity Bureau; the Queens County District Attorney has an Integrity Bureau; and the Bronx County District Attorney has a Rackets Bureau.

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